

**MDTC COMMENTS**  
**ATTACHMENT 2**



**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

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(617) 305-3580  
[www.mass.gov/dtc](http://www.mass.gov/dtc)

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GOVERNOR

TIMOTHY P. MURRAY  
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GREGORY BIALECKI  
SECRETARY OF HOUSING AND  
ECONOMIC DEVELOPMENT

BARBARA ANTHONY  
UNDERSECRETARY  
OFFICE OF CONSUMER AFFAIRS AND  
BUSINESS REGULATIONS

GEOFFREY G. WHY  
COMMISSIONER

October 28, 2009

William G. Bottiggi  
General Manager  
Braintree Electric Light Department  
150 Potter Road  
Braintree, MA 02184

Dear Mr. Bottiggi,

The Department of Telecommunications and Cable ("Department") is interested in clarifying its understanding of Braintree Electric Light Department ("BELD")'s implementation or use of Voice over Internet Protocol (VoIP) telephone service in the Commonwealth, and the implications of this for BELD's regulatory status in Massachusetts. As you may know, the Department has previously expressed its opinion that fixed VoIP telephone service provided on a common carrier basis is subject to the Department's regulatory authority under Chapter 159 of the Massachusetts General Laws, including compliance with the Department's consumer protections set forth in D.P.U. 18448.<sup>1</sup> BELD has previously expressed its willingness to file all necessary documents with the Department, including a tariff and registration statement, and to otherwise comply with the above referenced requirements.

To assist BELD in its effort to comply with the Department's requirements, enclosed is a copy of our registration form, which BELD must file within 30 days from the date of this letter. Once filed, the Department will consider BELD in compliance on a temporary basis, based on the filing of the registration statement and information concerning rates, terms and conditions of

<sup>1</sup> See, e.g., Letter from Michael A. Isenberg, Director, Competition Division, Massachusetts Department of Telecommunications and Cable, to Stacey L. Parker, Senior Director, Regulatory Affairs, Comcast (November 14, 2008), available at <http://www.mass.gov/dtc> through the following links: Telecommunications Division > Telecom Statutes, Rules, and Notices>Correspondence with Comcast Regarding Regulation of Fixed VoIP.

services that BELD previously filed with the Department. The latter information will be considered to satisfy BELD's tariffing requirements, until such time as BELD develops and files a properly-formatted permanent tariff. A sample tariff is enclosed to assist BELD in the development and filing of its permanent telecommunications tariff.

If you have any questions, please feel free to contact me at 617-368-1101.

Sincerely,

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Michael A. Isenberg  
Director, Competition Division

cc: Geoffrey Why, Commissioner  
Kajal Chattopadhyay, Deputy General Counsel  
Joslyn Day, Director, Consumer Division



**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

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GEOFFREY G. WHY  
COMMISSIONER

October 28, 2009

Tom Cohan  
Director, Government Relations, New England/NY  
Charter Communications  
95 Higgins Street  
Worcester, MA 01606

Dear Mr. Cohan,

The Department of Telecommunications and Cable ("Department") is interested in clarifying its understanding of Charter Communications ("Charter")'s implementation or use of Voice over Internet Protocol (VoIP) telephone service in the Commonwealth, and the implications of this for Charter's regulatory status in Massachusetts. The Department believes that Charter is currently offering facilities-based or fixed VoIP telephone services to Massachusetts customers, and further, that Charter has a properly filed tariff and registration statement on file with the Department that governs the provision of that service.

As you may know, the Department of Telecommunications and Cable ("Department") has previously expressed its opinion that fixed VoIP telephone service provided on a common carrier basis is subject to the Department's regulatory authority under Chapter 159 of the Massachusetts General Laws, including compliance with the Department's consumer protections set forth in D.P.U. 18448.<sup>1</sup>

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<sup>1</sup> See, e.g., Letter from Michael A. Isenberg, Director, Competition Division, Massachusetts Department of Telecommunications and Cable, to Stacey L. Parker, Senior Director, Regulatory Affairs, Comcast (November 14, 2008); Letter from Michael A. Isenberg, Director, Competition Division, Massachusetts Department of Telecommunications and Cable, to John L. Conroy, Vice President, Regulatory Massachusetts, Verizon (September 22, 2009), available at <http://www.mass.gov/dtc> through the following links: Competition Division > Telecommunications Division > Telecom Statutes, Rules, and Notices > Correspondence with Fixed VoIP Providers.



If Charter's retail telephone tariff on file with the Department does not govern the provision of its fixed VoIP telephone service and Charter is providing fixed VoIP telephone service in Massachusetts on an untariffed basis, in violation of Chapter 159 of the Massachusetts General Laws and the Department's registration requirements, or is not complying with all consumer protections set forth in D.P.U. 18448, this letter will serve as notice of Charter's obligation to come into compliance with the above referenced requirements within 30 days from receipt of this letter.

If you have any questions, please feel free to contact me at 617-368-1101.

Sincerely,

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Michael A. Isenberg  
Director, Competition Division

cc: Geoffrey Why, Commissioner  
Kajal Chattopadhyay, Deputy General Counsel  
Joslyn Day, Director, Consumer Division

**FRIEND, HUDAK & HARRIS, LLP**

ATTORNEYS AT LAW

SUITE 1450

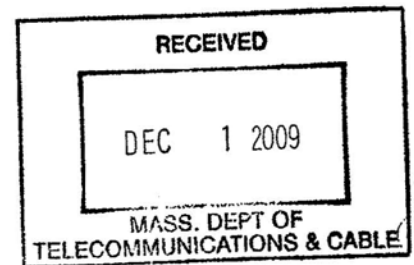
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November 30, 2009

**VIA ELECTRONIC AND OVERNIGHT MAIL**

Michael A. Isenberg  
Director, Competition Division  
Department of Telecommunications and Cable  
Two South Station  
Boston, Massachusetts 02110

**Re: Charter Communications, Inc.**

Dear Mr. Isenberg:

We are counsel to Charter Communications, Inc. ("Charter") and its subsidiaries.

On October 30, 2009, Charter received your letter requesting information regarding Charter's implementation or use of Voice over Internet Protocol ("VoIP") telephone services in the Commonwealth of Massachusetts. In that same letter, you also requested information concerning Charter's regulatory status in Massachusetts. In response to your inquiries, Charter provides the following information.

As an initial matter, as you are probably aware, Charter provides telephone services in Massachusetts through Charter Fiberlink MA-CCO, LLC ("Charter Fiberlink"), its indirect, wholly owned subsidiary. On November 20, 2003, Charter Fiberlink submitted a Statement of Business Operations/Registration to the Department of Telecommunications and Cable (then known as the Department of Telecommunications and Energy) (collectively, the "Department"). In addition, on that same date, Charter Fiberlink submitted initial local and intrastate interexchange service and intrastate access service tariffs to the Department. Since submitting its initial tariffs, Charter Fiberlink has revised and/or updated those tariffs in the ordinary course of its business.

Charter Fiberlink's principal service offering in Massachusetts is its all distance voice communications service permitting unlimited calling throughout the United States, Canada and Puerto Rico, combined with eleven (11) features (anonymous call rejection, call waiting, cancel call waiting, caller ID, caller ID with call waiting, speed dial 8, call forwarding-selective, call forwarding-variable, call screening, custom ring, and selective call acceptance) and the lease of a multimedia terminal adaptor, which connects the customer's home wiring to the cable television facilities of Charter Fiberlink's affiliate. Although Charter Fiberlink also offers point-to-point

**FRIEND, HUDAK & HARRIS, LLP**  
**ATTORNEYS AT LAW**

Michael A. Isenberg  
November 30, 2009  
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private line telecommunications services in certain portions of Massachusetts, Charter Fiberlink does not offer a telephone service providing only local or intrastate calling, nor does it offer a primary line service that does not include the lease of a multimedia terminal adaptor.

Charter Fiberlink provides its voice communication service over a broadband connection provided by its cable television affiliate using the same cable that is used to provide cable television service. As such, Charter Fiberlink has no local telecommunications network in Massachusetts. Although Charter Fiberlink has a switch located in Massachusetts, the switch serves all parts of the state within which Charter Fiberlink offers voice communications service and is not limited to any local exchange. When a Charter Fiberlink customer in Massachusetts places a call, whether that call is to her neighbor across the street or to a relative in Alaska, Charter Fiberlink switches that call at its single Massachusetts switch and delivers the call to the local exchange carrier that serves the called party. In some cases where Charter Fiberlink is directly interconnected with the terminating carrier, Charter Fiberlink delivers the call directly to that carrier, while in other cases Charter Fiberlink may deliver the call through one or more intermediary carriers.

Charter Fiberlink's voice communications service satisfies the Federal Communications Commission's ("FCC") definition of an interconnected VoIP service.<sup>1</sup> With respect to such service, Charter Fiberlink is regulated pursuant to the FCC's jurisdiction, and Charter Fiberlink complies with all current FCC requirements applicable to interconnected VoIP service, including requirements related to 911, federal universal service, CALEA, CPNI, number portability and accessibility.<sup>2</sup> The FCC's regulation of interconnected VoIP service continues to evolve, and it is possible (if not likely)

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<sup>1</sup> The FCC has defined "interconnected VoIP service" as "a service that: (1) Enables real-time, two-way voice communications; (2) Requires a broadband connection from the user's location; (3) Requires Internet protocol-compatible customer premises equipment (CPE); and (4) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network." 47 C.F.R. § 9.3.

<sup>2</sup> *IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36, 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005); *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989 (2005); *Universal Service Contribution Methodology*, WC Docket No. 06-122, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 (2007); *IP-Enabled Services; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, WC Docket No. 04-36, CG Docket No. 03-123, Report and Order, 22 FCC Rcd 11275 (2007); *Telephone Number Requirements for IP-Enabled Services Providers*, WC Docket No. 07-243, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531 (2007).

FRIEND, HUDAK & HARRIS, LLP  
ATTORNEYS AT LAW

Michael A. Isenberg  
November 30, 2009  
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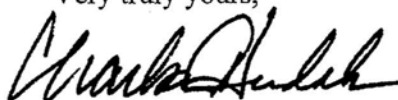
that the FCC will impose additional requirements related to the provision of interconnected VoIP services in the future.<sup>3</sup>

Charter Fiberlink does not agree that its voice communications service is subject to state regulation, including the Department's regulatory authority under Chapter 159 of the Massachusetts General Laws or the Department's consumer protection requirements set forth in D.P.U. Docket 18448. However, because of uncertainties arising from the evolving regulatory framework applicable to interconnected VoIP service, Charter Fiberlink has decided to voluntarily comply with the laws and regulations that apply to the provision of traditional local telephone services in Massachusetts in connection with Charter Fiberlink's voice communications service in Massachusetts. Such voluntary compliance on Charter Fiberlink's part includes, among other things, filing and maintaining tariffs that describe Charter Fiberlink's voice communications service, as well as Charter Fiberlink's voluntary compliance with the Department's consumer protection requirements set forth in D.P.U Docket 18448, as described in Charter Fiberlink's tariffs.

Please be aware, however, that Charter Fiberlink reserves the right in the future to modify the manner in which it offers or provides its voice communications service in Massachusetts, including Charter Fiberlink's regulatory treatment of its voice communications service in Massachusetts, to conform to the evolving regulatory framework applicable to that service.

I hope that the foregoing information is helpful to the Department in understanding Charter Fiberlink's VoIP telephone services offered in Massachusetts and Charter Fiberlink's regulatory treatment of such services. If further information is needed by the Department, please feel free to contact the undersigned.

Very truly yours,



Charles A. Hudak

Counsel to Charter Communications, Inc. and its Subsidiaries

CAH/jh

cc: Mark E. Brown, Esq.  
Tom Cohan  
Charter Communications, Inc.  
(via Electronic Mail)

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<sup>3</sup> See *Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services*, CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36, Notice of Inquiry, 24 FCC Rcd 11380 (Rel. Aug. 28, 2009).



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SECRETARY OF HOUSING AND  
ECONOMIC DEVELOPMENT

**DANIEL C. CRANE**  
DIRECTOR OF CONSUMER AFFAIRS  
AND BUSINESS REGULATION

**SHARON E. GILLET**  
COMMISSIONER

April 28, 2008

Stacy L. Parker  
Senior Director, Regulatory Affairs  
Comcast Cable Communications, Inc.  
12 Tozer Road  
Beverly, MA 01915

Dear Ms. Parker:

With the completion of the discontinuance of Comcast Communication's ("Comcast") Digital Phone service imminent within the next month or so, the Department of Telecommunications and Cable ("Department") is interested in better understanding the implications of this change for Comcast's regulatory status in Massachusetts. In verbal statements to the Department, Comcast has stated that once it completes the migration of its customers to its Digital Voice VoIP service, provided over an Internet Protocol network platform, it will no longer be a telecommunications common carrier subject to state regulatory jurisdiction under G.L. c. 159, but instead will be a non-regulated VoIP provider subject exclusively to Federal Communications Commission ("FCC") jurisdiction.

Comcast has indicated to the Department that despite this change in regulatory status, there will be few changes in the Company's compliance with existing Massachusetts regulatory obligations, as the Company has agreed to voluntarily comply with most of the Massachusetts regulatory obligations to which it is currently subject. In an effort to understand in more detail the scope of this commitment, the Department requests that Comcast respond to the following information requests:

1. Please discuss in detail how Comcast's state and federal regulatory obligations will change as a result of its change in regulatory status.
2. Please provide a comprehensive list of those state and federal regulatory obligations to which Comcast will no longer be subject and will no longer comply (e.g., no longer filing tariffs).

3. Please provide a comprehensive list of those state and federal regulatory obligations to which Comcast will continue to be subject and will comply. For each regulatory obligation, please indicate if compliance will be on a mandatory or voluntary basis.
4. Please provide a comprehensive legal analysis, with citation to relevant law, supporting Comcast's position that as a fixed (or non-nomadic) VoIP provider, it will not be subject to state regulatory authority.
5. The Department is aware that Comcast has submitted a formal request for interconnection with Granby Telephone Company ("Granby") of Granby, Massachusetts, pursuant to Sec. 251 and 252 of the Telecommunications Act of 1996. In the March 5, 2008 letter, Comcast represented that it is a certified competitive local exchange carrier in Massachusetts, and has the legal right to negotiate or arbitrate an interconnection agreement with Granby by virtue of its status as a telecommunications carrier.

In addition, the Department is aware of a petition filed on April 11, 2008, by the Vermont Telephone Company with the FCC seeking clarification regarding whether VoIP providers are entitled to the interconnection rights of telecommunications carriers. See Federal Communications Commission Public Notice DA 08-08-916, WC Docket No. 08-56, at page 1 (dated April 19, 2008) (establishing Pleading Cycle for Comments on Vermont Telephone Company's Petition for Declaratory Ruling Regarding Interconnection Rights). According to the Notice, Vermont Telephone Company "[s]pecifically . . . seeks clarification regarding: (1) whether only telecommunications carriers are entitled to interconnection with local exchange carriers pursuant to sections 251 and 252; (2) whether a VoIP provider is entitled to interconnection pursuant to sections 251 and 252 when, in separate proceedings, that provider has taken a position that it is not a telecommunications carrier; and (3) whether Comcast Phone of Vermont, LLC, as a VoIP provider, is a telecommunications carrier and therefore entitled to interconnection pursuant to sections 251 and 252." Id., citing Vermont Petition at 1-8.

Please explain in detail why Comcast has requested interconnection with Granby as a telecommunications carrier, when it has represented to the Department that as of April 29, 2008, or shortly thereafter, it will become exclusively a VoIP provider in Massachusetts.

Please submit your responses to these information requests within two weeks from the date of this letter. Thank you in advance for your cooperation with this request.

Sincerely,

/s/

Michael A. Isenberg  
Director, Competition Division

cc: Sharon E. Gillett, Commissioner  
Geoffrey G. Why, General Counsel



Comcast  
12 Tozer Road  
Beverly, MA 01915  
978.927.5700 Tel  
978-927-6074 Fax  
www.comcast.com

May 12, 2008

*Via Electronic and Overnight Mail*

Michael Isenberg, Director  
Competition Division  
MA Department of Telecommunications and Cable  
Two South Station  
Boston, MA 02110

***Re: Comcast Reply to the Department's Letter of April 28, 2008***

Dear Director Isenberg:

On behalf of Comcast Phone of Massachusetts, Inc.,<sup>1</sup> I would like to thank you for the opportunity to address the questions raised by the Massachusetts Department of Telecommunications and Cable (the "Department") regarding Comcast Digital Voice. As a preliminary matter, let me explain in some detail the Comcast voice entities in Massachusetts, which I hope will clarify the issues reflected in these questions.

Comcast Phone of Massachusetts, Inc., ("Comcast Phone"), a Delaware corporation doing business in Massachusetts, is the entity that has a Statement of Business Operations on file with the Department, and is subject to state regulation pursuant to G.L. c. 159. The discontinuance of service referred to in the Department's letter of April 28, 2008 was filed with the Federal Communications Commission ("FCC") by Comcast Phone because it was discontinuing its Comcast Digital Phone service to retail end-users. Comcast Phone remains a state regulated telecommunications carrier in Massachusetts. It is the entity that enters into interconnection agreements with telecommunications carriers for the exchange of traffic pursuant to Section 251 of the Telecommunications Act and holds numbering rights and obligations, pursuant to federal law and regulations. Comcast Phone is the regulated CLEC which offers telecommunications services to its customer (and affiliated entity) Comcast IP Phone II, LLC ("Comcast IP Phone"), a Delaware limited

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<sup>1</sup> Comcast Phone of Massachusetts, Inc. is the telecommunications provider with the Registration on file at the Department. There is no such entity in Massachusetts as Comcast Communications, as referenced in the DTC's April 28, 2008 letter.

liability company doing business in Massachusetts, and other entities that may want to make use of Comcast Phone's wholesale services.

Comcast IP Phone is an "interconnected VoIP" provider, as that term is defined by the FCC.<sup>2</sup> Comcast IP Phone is subject to the jurisdiction of the FCC and delivers interconnected VoIP voice service known as Comcast Digital Voice ("CDV") to end-user customers in Massachusetts. Comcast IP Phone relies on Comcast Phone to provide certain underlying telecommunications services, including two way interconnection for the transmission and routing of telephone exchange and exchange access service to and from the PSTN; access to and administration of numbering resources; local number portability – both porting in and porting out of telephone numbers; Operator Services; 911 access; Directory Listing and Directory Assistance services.

With this background, below please find the responses to the Department's questions.

- 1. Please discuss in detail how Comcast's state and federal regulatory obligations will change as a result of its change in regulatory status.**

There is no change in the regulatory status of either Comcast Phone or Comcast IP Phone as a result of the discontinuance of the Comcast Digital Phone service. Therefore, there are no changes in the state and/or federal regulatory obligations of each of these entities.

- 2. Please provide a comprehensive list of those state and federal regulatory obligations to which Comcast will no longer be subject and will no longer comply (e.g., no longer filing tariffs).**

As stated above, there is no change in the state and/or federal obligations of either Comcast Phone or Comcast IP Phone as a result of the discontinuance of the Comcast Digital Phone service.

- 3. Please provide a comprehensive list of those state and federal regulatory obligations to which Comcast will continue to be subject and will comply. For each regulatory obligation, please indicate if compliance will be on a mandatory or voluntary basis.**

As stated above, the discontinuance of the Comcast Digital Phone product does not result in a change to the state and/or federal regulatory obligations of either Comcast Phone of Massachusetts or of Comcast IP Phone.

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<sup>2</sup> The FCC has defined an "interconnected VOIP service as one that "(1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network." See 47 C.F.R. § 9.3.



Comcast Phone, the telecommunications carrier, remains subject to applicable state and federal telecommunications laws, rules and regulations, including payment of the annual general assessment. Comcast Phone is a CLEC with interconnection rights pursuant to 251 and 252 of the Telecommunications Act.

As discussed further below, Comcast IP Phone is regulated pursuant to FCC jurisdiction and not at the state level. Comcast IP Phone complies with applicable FCC regulations as set forth in the FCC's series of orders in its IP-enabled docket, including CPNI, 911, CALEA, federal USF, local number portability, and accessibility.<sup>3</sup>

By virtue of the federal regulation and preemption discussed below, Comcast IP Phone is not subject to state regulation and therefore is not subject to G.L. c. 159, or the rules relating to residential billing and termination practices set forth in D.P.U. Docket 18448 (1977). However, Comcast IP Phone voluntarily supports the items listed below. In addition, we continue to voluntarily work with the Department with respect to customer inquiries and complaints. It is our commitment to respond in a timely manner to all complaints forwarded to us by the Consumer Division, and to keep lines of communications open.

- Comcast IP Phone voluntarily collects the MA 911/TRS surcharge required of telecommunications providers pursuant G.L. c. 6A, § 18H. Comcast has voluntarily contributed to 911/TRS since it began offering Comcast Digital Voice service in Massachusetts. Comcast IP Phone also pays taxes and fees of general applicability, such as state sales tax.
- Comcast IP Phone's revenues, as derived from its wholesale transactions with its affiliate, are captured in the Annual Report for telecommunications providers filed by Comcast Phone, as required by G.L. c. 159 § 32.
- Comcast IP Phone voluntarily provides Directory Assistance free of charge to visually impaired or mentally disabled customers or persons aged 65 and older who certify eligibility.
- Comcast IP Phone does not currently charge customers a federal Subscriber Line Charge (SLC). A SLC is a charge that local exchange carriers are permitted to collect

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<sup>3</sup> *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Report and Order and Further Notice of Proposed Rulemaking, 22 F.C.C.R. 6927 (2007); *IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 F.C.C.R. 10245 (2005); *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket 04-295, First Report and Order and Further NPRM, 20 F.C.C.R. 14989 (2005); *Universal Service Contribution Methodology*, WC Docket No. 06-122, Report and Order and Notice of Proposed Rulemaking, 21 F.C.C.R. 7518, ¶ 35 (2006); *Telephone Number Requirements for IP-Enabled Services Providers*, WC Docket No. 07-243, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 F.C.C.R. 19531 (2007); *IP-Enabled Services; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, WC Docket Nos. 04-36, 03-123, Report and Order, 22 F.C.C.R. 11275 (2007).

to recover the costs of the use of its local network for long distance service. A typical SLC exceeds \$6.00 per line.

- Although Comcast IP Phone is not subject to the rules set forth in D.P.U. Docket 18848, it provides the following important consumer protections.
  - Comcast provides at least 30 days from the receipt of bill for payment in full.
  - Bills are not considered delinquent until after 30 days.
  - CDV customers receive at least 15 days written notice prior to discontinuance.
  - CDV customers are called 5 days prior to soft disconnection.
  - Comcast works with customers in unique circumstances on a case-by-case basis. While there is not specific protection from disconnection for customers aged 65 and older as set forth in 18848, Comcast works with all customers who need additional time to pay or have an emergency that has prevented timely payment.
  - Comcast offers deferred payment agreements to those customers who are unable to timely pay.
  - CDV service will not be shut off if the customer is disputing the CDV portion of the bill.
  - Comcast works with the Department's Consumer Division to respond to and resolve all customer complaints on a timely basis.

**4. Please provide a comprehensive legal analysis, with citation to relevant law, supporting Comcast's position that as a fixed (or non-nomadic) VoIP provider, it will not be subject to state regulatory authority.**

As the Department is aware, the Federal Communications Commission is currently considering the regulatory status of fixed VoIP services. *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 F.C.C.R. 4863, ¶¶ 42-44 (2004). The FCC is the appropriate regulator to consider this federal question and based on the current state of the law, any communications regulation of Comcast's VoIP services would be preempted under federal law.

**State Regulation of "Information Services" Such as CDV Is Preempted.** Because Comcast's interconnected VoIP service is considered an "interstate information service," state regulation would be preempted. The federal Communications Act distinguishes between regulated "telecommunications services," such as the traditional telephone service offered by carriers such as Verizon, and nonregulated "information services," defined as the "offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications." See 47 U.S.C. § 153(20) & (46). "[A]ny state regulation of an information service conflicts with the federal policy of nonregulation." *Minnesota Pub. Utils. Comm'n v. FCC*, 483 F.3d 570, 580 (8th Cir. 2007) (citing and affirming *In re Vonage Holdings Corp.*, 19 F.C.C.R. 22404, ¶ 21 (2004) ("*Vonage Order*"));<sup>4</sup> *Vonage*

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<sup>4</sup> See also *In re Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, 17

*Holdings Corp. v. Minn. Pub. Utils. Comm'n*, 290 F. Supp. 2d 993, 1002 (D. Minn. 2003) (“[state] regulations that have the effect of regulating information services are in conflict with federal law and must be preempted”).

Comcast’s VoIP service is an “information service” because Comcast’s VoIP service indisputably offers protocol conversion, a key component of the definition of “information service.” Comcast’s VoIP service is a protocol conversion service because it allows customers whose data is being generated in one communications protocol (such as, for example, the Internet protocol) to communicate with users who send or receive data in a different communications protocol (such as, for example, the protocol used by traditional telephone networks to send and receive calls, the time-division multiplexing (“TDM”) protocol).

Services that offer protocol conversion are “information services” because protocol conversion constitutes the “capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications” and “alters the form and content of the information sent and received.” 47 U.S.C. § 153(20). *See, e.g., In re Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, 11 F.C.C.R. 21,905 ¶¶ 104-106 (1996); *In re Universal Service Contribution Methodology*, 21 F.C.C.R. 7518, ¶ 39 (2006), *vacated in part on other grounds sub nom. Vonage Holdings Corp. v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007)); *Southwestern Bell Telephone, L.P. v. Missouri Public Service Commission*, 461 F. Supp. 2d 1055 (E.D. Mo. 2006).

CDV is also an “information service” because is tightly integrated with a web-based “Digital Voice Center” through which users manage their communications interactively, listening to voicemails and managing settings through any computer connected to the Internet. This web portal is similar to the one integrated into the Vonage service, which the FCC recognized in its *Vonage Order* as innovative “integrated capabilities” counseling against “molding this new service [VoIP] into the same old familiar shape.” 19 F.C.C.R. at 22421, ¶ 25 & n.93; *see also id.* at 22424, ¶ 32.

**State Regulation of Comcast’s VoIP Service Is Also Preempted Because Such Regulation Would Undermine Federal Objectives.** State regulation would also be preempted as frustrating federal policy for reasons apart from its classification as information service. States’ authority to regulate *intrastate* communications, *see* 47 U.S.C. § 152(b), is preempted where it frustrates the ability of the FCC to regulate (or leave unregulated) *interstate* communications. *See Louisiana Pub. Serv. Comm’n*, 476 U.S. at 376 n.4 (preemption if “state regulation would negate the federal tariff”). Since states may not regulate in a way that “stands as an obstacle to the accomplishment of the full objectives of Congress,” *id.* at 368-69, regulations that cannot be applied discretely to intrastate communications without also regulating interstate services are preempted when

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F.C.C.R. 4798 ¶ 9 (2002); *aff’d in part, vacated in part, sub nom. National Cable & Telecomm. Ass’n v. Brand X Internet Servs.*, 345 F.3d 1120 (9th Cir. 2003), *rev’d*, 545 U.S. 967 (2005); *In re Amendment of (Section 64.702 of the Commission’s Rules and Regulations Second Computer Inquiry)*, 88 F.C.C.2d 512 (1981), *aff’d sub nom. Computer and Computer Industry Ass’n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982).

the substance of the regulation conflicts with federal policy. *See, e.g., Illinois Bell Tel. Co. v. FCC*, 883 F.2d 104, 114-16 (D.C. Cir. 1989); *Public Utils. Comm'n of Texas v. FCC*, 886 F.2d 1325 (D.C. Cir. 1989); *North Carolina Utils. Comm'n v. FCC*, 537 F.2d 787 (4th Cir. 1976); *North Carolina Utils. Comm'n v. FCC*, 552 F.2d 1036 (4th Cir. 1977); *In re Petition for Emergency Relief and Declaratory Ruling Filed by the BellSouth Corp.*, 7 F.C.C.R. 1619 (1992). "Where federal policy is to encourage certain conduct, state law discouraging that conduct must be pre-empted." *Vonage Holdings Corp.*, 290 F. Supp. 2d at 1002 (citing *Xerox Corp. v. County of Harris*, 459 U.S. 145, 151-53 (1982)).

Regulation of fixed VoIP services would frustrate federal policies promoting deployment of advanced, broadband and Internet-based services through a national policy of deregulation. Comcast's High-Speed Internet offering is indisputably a service subject to Congress' policy of deregulation. *See In re Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, 17 F.C.C.R. 4798, ¶ 9 (2002); *aff'd sub nom. National Cable & Telecomm. Assn. v. Brand X Internet Servs.*, 545 U.S. 967 (2005). The FCC has made clear that nascent IP-enabled services including VoIP services must be permitted to develop free of regulation, explaining that "IP-enabled services generally -- and VoIP in particular -- will encourage consumers to demand more broadband connections, which will foster the development of more IP-enabled services," and that its "aim" is to "rely[] wherever possible on competition" rather than regulation to foster IP-enabled technologies such as VoIP because "development and deployment of these services is in its early stages," "these services are fast-changing and likely to evolve in ways that we cannot anticipate," and "imposition of regulatory mandates, particularly those that impose technical mandates, should be undertaken with caution." *IP-Enabled Services*, 19 F.C.C.R. 4863, ¶¶ 5, 53. *See also In re Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as amended, to Provide Wholesale Telecommunications Services to VOIP Providers*, 22 F.C.C.R. 3513 (2007); *In re Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, 22 F.C.C.R. 20235, ¶ 21 (2007); *In re Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, 22 F.C.C.R. 19633, ¶ 17 (2007); *In re Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, 22 F.C.C.R. 5101, ¶¶ 121-122 (2006) (same, for competitive cable providers).

State regulation of fixed VoIP services could not coexist with federal policies. Even the basic regulatory requirement that a VoIP provider file a tariff frustrates the goal of "promoting competition" and "may actually harm consumers by impeding the development of vigorous competition." *Minnesota Public Utilities Comm'n*, 483 F.3d at 580 (citing *Vonage Order*, 19 F.C.C.R. at 22416 ¶ 20). Moreover, any Massachusetts regulation of the intrastate components of Comcast's "Digital Voice" service would plainly affect Comcast's interstate service offerings. Such forced separation of CDV's bundled all-distance voice service offering into jurisdictional components would necessarily frustrate Comcast IP Phone's ability to offer the interstate portions of the

service, in violation of federal law. *See, e.g., Minnesota Pub. Utils. Comm'n*, 483 F.3d at 577-78 (affirming preemption of State regulation of VoIP service where FCC had found that carrier had no “service-driven reason” to separate intra- from interstate traffic and doing so would involve “economic burden”); *Illinois Bell Tel. Co. v. FCC*, 883 F.2d at 113 n.7 (affirming preemption of state regulation of marketing of jurisdictionally mixed Centrex service where, *inter alia*, service was “typically sold in a package with interstate services”); *North Carolina Utils. Comm'n*, 552 F.2d at 1043 (affirming preemption of state tariff prohibiting customers from supplying own telephones, because as a “practical and economic” matter customers expect to use same equipment for inter- and intrastate calls); *BellSouth Corp.*, 7 F.C.C.R. 1619, ¶ 15 (preempting state regulation of voicemail service where “most customers want voice mail service for both jurisdictional uses” and it therefore was “not likely that a separate interstate service would find acceptance.”).

**If CDV Were Subject to State Regulation, Such Regulation Likely Also Would Be Preempted Under 47 U.S.C. § 253.** Finally, state regulation would be preempted even if a severable, intrastate “telecommunications” service existed subject to State regulation. Compliance with state law likely would be so burdensome to Comcast IP Phone as to constitute “an existing material interference with the ability to compete in a fair and balanced market.” *See Level 3 Communications v. City of St. Louis*, 477 F.3d 528, 533 (8th Cir. 2007) (citing *Cal. Payphone Ass’n v. Town of West New York*, 12 F.C.C.R. 14,191, 14,206, ¶ 31 (1997)). Thus any state telecommunications requirements likely would be thus separately preempted by Section 253 of the federal Communications Act, which enforces pro-competitive Congressional policy by forbidding states from erecting barriers to entry into the telecommunications market. *See* 47 U.S.C. § 253(a) (“No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”).

The cumulative effect of state regulation of Comcast IP Phone’s service – since it was designed for a traditional switched-access telephone company incumbent network and not for the converged, broadband-based, IP-enabled service offered by Comcast IP Phone – likely would meet the standard of a “an existing material interference with the ability to compete.” *See Level 3 Communications*, 477 F.3d at 532; *TCG New York, Inc. v. City of White Plains*, 305 F.2d 67, 76 (2d Cir. 2002)).

5. **The Department is aware that Comcast has submitted a formal request for interconnection with Granby Telephone Company (“Granby”) of Granby, Massachusetts, pursuant to Sec. 251 and 252 of the Telecommunications Act of 1996. In the March 5, 2008 letter, Comcast represented that it is a certified competitive local exchange carrier in Massachusetts, and has the legal right to negotiate or arbitrate an interconnection agreement with Granby by virtue of its status as a telecommunications carrier.**



**In addition, the Department is aware of a petition filed on April 11, 2008, by the Vermont Telephone Company with the FCC seeking clarification regarding whether VoIP providers are entitled to the interconnection rights of telecommunications carriers. See Federal Communications Commission Public Notice DA 08-08-916, WC Docket No. 08-56, at page 1 (dated April 19, 2008) (establishing Pleading Cycle for Comments on Vermont Telephone Company's Petition for Declaratory Ruling Regarding Interconnection Rights). According to the Notice, Vermont Telephone Company "[s]pecifically . . . seeks clarification regarding: (1) whether only telecommunications carriers are entitled to interconnection with local exchange carriers pursuant to sections 251 and 252; (2) whether a VoIP provider is entitled to interconnection pursuant to sections 251 and 252 when, in separate proceedings, that provider has taken a position that it is not a telecommunications carrier; and (3) whether Comcast Phone of Vermont, LLC, as a VoIP provider, is a telecommunications carrier and therefore entitled to interconnection pursuant to sections 251 and 252." *Id.*, citing Vermont Petition at 1-8.**

**Please explain in detail why Comcast has requested interconnection with Granby as a telecommunications carrier, when it has represented to the Department that as of April 29, 2008, or shortly thereafter, it will become exclusively a VoIP provider in Massachusetts.**

Effective with the discontinuance of the Digital Phone service, Comcast Phone will not "become exclusively a VOIP provider in Massachusetts." Rather, Comcast Phone is a telecommunications provider as described above and not an interconnected VOIP provider. As such, Comcast Phone is a telecommunications carrier with full Sections 251 and 252 interconnection rights, and is the wholesale telecommunications provider that requested interconnection negotiations with Granby. As the FCC explained in the *Time Warner Declaratory Ruling*, "[b]ecause the Act does not differentiate between retail and wholesale services when defining 'telecommunications carrier' or 'telecommunications service,' we clarify that telecommunications carriers are entitled to interconnect and exchange traffic with incumbent LECs pursuant to section 251(a) and (b) of the Act for the purpose of providing wholesale telecommunications services."<sup>5</sup> The FCC also explicitly stated that the ultimate classification of the service provided to the end user has no bearing on the wholesale carrier's interconnection rights.<sup>6</sup> The Department likewise does not differentiate between wholesale and retail service for purposes of telecommunications carrier status. Memorandum to Massachusetts Telecommunications Carriers and Interested Persons from Michael Isenberg, Director, Telecommunications Division and Jesse S. Reyes, Counsel, *Clarification of Wholesale Tariffing Requirements*, at pp. 6-7 (Aug. 12, 2003).

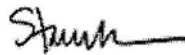
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<sup>5</sup> See *Time Warner Declaratory Ruling*, 22 FCC Rcd 3513, ¶ 8 (2007).

<sup>6</sup> *Id.* at ¶ 15.

I hope the above-provided information is helpful in clarifying the structure and regulatory framework of both Comcast Phone and Comcast IP Phone in Massachusetts. Please do not hesitate to contact me directly at (978) 927-5700 ext. 4337 if you have further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Stacey", followed by a horizontal line.

Stacey L. Parker

cc: Sharon E. Gillett, Commissioner  
Geoffrey G. Why, General Counsel  
Brian Rankin, Comcast



**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

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DANIEL C. CRANE  
DIRECTOR OF CONSUMER AFFAIRS  
AND BUSINESS REGULATION

SHARON E. GILLET  
COMMISSIONER

November 14, 2008

Stacey L. Parker  
Senior Director, Regulatory Affairs  
Comcast Cable Communications, Inc.  
12 Tozer Road  
Beverly, MA 01915

Dear Ms. Parker:

On April 28, 2008, the Department of Telecommunications and Cable ("Department") issued a series of questions to Comcast for purposes of clarifying the regulatory status of Comcast's telephone services, in light of Comcast's pending completion of its transition from a circuit-switched telephone network platform to an Internet Protocol ("IP") network platform in Massachusetts. On May 12, 2008, Comcast responded by letter to the Department's questions, including providing the requested legal analysis supporting its position on jurisdiction issues.

In its May 12th Letter, Comcast asserted that with the discontinuance of its circuit-switched Digital Phone service in Massachusetts and the provision to all of its end-user customers (both existing and new) of an interconnected Voice over Internet Protocol ("VoIP") telephone service known as Comcast Digital Voice, it would no longer be subject to Department jurisdiction, under Massachusetts General Laws Chapter 159, as a telecommunications common carrier. Instead, Comcast believed it would be subject only to the jurisdiction of the Federal Communications Commission ("FCC") as an interconnected VoIP provider. Although it contended that its Digital Voice service, provided by an affiliate called Comcast IP Phone, LLC ("Comcast IP Phone"), is not subject to Department jurisdiction, including the Department's consumer protections set forth in Order D.P.U. 18448, Comcast stated that Comcast IP Phone will voluntarily comply with certain Department or state law requirements and consumer protections, including certain limited and, what appear to be, different billing and termination practices than those contained in D.P.U. 18448.



The Department has reviewed Comcast's May 12th Letter, including its legal analysis supporting its position that interconnected VoIP provided by Comcast IP Phone in Massachusetts is solely within the jurisdiction of the FCC. Based on this review and the Department's understanding of the current state of the law as it pertains to **fixed** VoIP, the type of interconnected VoIP that Comcast IP Phone provides (in contrast to **nomadic** VoIP, which is a markedly different type of service), the Department rejects Comcast's conclusion.

While the FCC and federal courts have ruled that states are preempted from regulating nomadic VoIP services, neither have ever held that regulation of **fixed** VoIP is subject to federal preemption. In a decision involving nomadic VoIP, the FCC decided that state regulation of nomadic VoIP services was preempted by federal law and policy because "the characteristics of [Vonage's nomadic VoIP service] preclude any practical identification of, and separation into, interstate and intrastate communications for purposes of effectuating a dual federal/state regulatory scheme." *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission ("Vonage Order")*, 19 FCCR 22404 ¶ 14 (November 12, 2004). On appeal, the Eighth Circuit upheld the *Vonage Order* and the FCC's rationale for preempting state regulation of nomadic VoIP services. *Minn. Pub. Utils. Comm'n v. FCC*, 483 F.3d 570 (8<sup>th</sup> Cir. 2007).

Notably, the Eighth Circuit specifically distinguished **fixed** VoIP service and concluded that preemption of state regulation of fixed VoIP services "remains an open issue." *Id.* at 583. That Court stated, "when VoIP is offered as a fixed service rather than a nomadic service, the interstate and intrastate portions of the service can be more easily distinguished." *Id.* at 575. Other courts and even the FCC have indicated that fixed VoIP services should be treated differently than nomadic VoIP. In *Comcast IP Phone of Missouri, LLC v. Mo. Pub. Utils. Comm'n*, 2007 WL 172359 (W.D. Mo. 2007), a Missouri federal court held that "the FCC has not preempted the entire field of VoIP services" and, accordingly, a state regulatory authority was legally permitted to determine whether a fixed VoIP service was subject to state regulation. Furthermore, the FCC itself has stated:

VoIP provider[s] with a capability to track the jurisdictional confines of customer calls would no longer qualify for the preemptive effects of our *Vonage Order* and would be subject to state regulation. This is because the central rationale justifying preemption set forth in the *Vonage Order* [the inseparability of inter- and intrastate calls] would no longer be applicable....

*In the Matter of Universal Service Contribution Methodology*, 21 FCCR 7518 ¶ 56 (June 27, 2006).<sup>1</sup>

<sup>1</sup> We note that on November 5, 2008, the FCC issued an Order on Remand of its *ISP Remand Order*, a Report and Order on proposed reforms to the federal universal service fund, and Further Notice of Proposed Rulemaking concerning broader proposals to reform the intercarrier compensation and universal service systems. See *In the Matter of High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link Up*, WC Docket No. 03-109, *Universal Service Contribution Methodology*, WC Docket No. 06-122, *Numbering Resource Optimization*, CC Docket No. 99-200, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, and *IP-Enabled Services*, WC Docket No. 04-36, Order on Remand, and Report and Order, and Further Notice of Proposed Rulemaking (rel. Nov. 5, 2008). None of these decisions in any way change current law, which gives the Department authority to regulate fixed VoIP services.

Because interstate and intrastate fixed VoIP calls can be distinguished, and because the FCC does not have jurisdiction over intrastate calls (see 47 U.S.C. § 153(22)), the Department has exclusive authority to regulate intrastate fixed VoIP communications within the Commonwealth, and is compelled by state statutory requirements and important public policy concerns to do so. With respect to the former, G.L. c. 159 imposes an obligation on the Department to regulate all telecommunications common carriage in Massachusetts. G.L. c. 159, Sec. 12. The standards for determining whether a telecommunications company is providing common carriage under G.L. c. 159 are set forth in *Complaint of CTC*, D.T.E. 06-87 (2007) (holding that for purposes of c. 159, Massachusetts will apply the FCC's test for common carriage); *Virgin Islands Tel. Corp. v. FCC*, 198 F.3d 921 (D.C. Cir. 1999) (outlining FCC's two-part test for common carriage); *Nat'l Ass'n of Regulatory Util Comm'rs v. FCC*, 533 F.2d 601, 607-09 (D.C. Cir. 1976) ("NARUC") (same). In order to qualify as a common carrier, a telecommunications carrier must 1) offer to serve all similarly situated customers interested in purchasing telecommunications services "indifferently" (i.e., on the same terms); and 2) permit customers to transmit content of their choosing over the provider's facilities. See *NARUC*, 533 F.2d at 608-09 (defining the second part of the test as permitting customers to "transmit intelligence of their own design and choosing"). In this case, the fact that Comcast offers its fixed VoIP service to the general public in Massachusetts is beyond dispute. Comcast is the largest cable provider in the Commonwealth and provides its fixed VoIP services to more than 220 cities and towns within Massachusetts. Likewise, Comcast satisfies the second part of the test by allowing its customers the ability to transmit voice communications of their choosing over Comcast's fixed VoIP network. Thus, under G.L. c. 159, Comcast's fixed VoIP Digital Voice service is being provided as common carriage and is by statute subject to the Department's regulatory authority, in the same way that all other intrastate telecommunications common carrier services are subject to the Department's jurisdiction.

Apart from fulfilling its statutory obligations, the Department's regulation of Comcast's fixed VoIP service serves two fundamental public policy objectives: first, the preservation of important consumer protections and just and reasonable services, and second, the maintenance of a level playing field for telecommunications competition in the Commonwealth.

With respect to the first objective, consumers buying a fixed telephone service are typically not very interested in or aware of the technical differences between VoIP and traditional circuit switched services, and they rightfully expect that both services will provide them with equivalent consumer protections and will be just and reasonable. Customers of telephone services regulated by the Department today rely on the Department to ensure that their phone service will be safe and reliable. With new competitors and technologies providing telephone service, now more than ever, consumers need the Department to protect them against unreasonable, unfair, deceptive, and anti-competitive practices, including (1) unjustified payments or disconnection over legitimate billing disputes; (2) extended service outages that can be life-threatening for sick and elderly citizens and can jeopardize the survival of small and medium-sized businesses that depend on telecommunications services to function; (3) disruption to or poor quality E911 service; (4) the loss of expected benefits, such as 10 free directory assistance phone calls (and more for the elderly); and (5) monopolistic practices in those areas of the state that may be served by a single provider using fixed VoIP technology. Consumers unequivocally need the ability to seek assistance from the Department in situations like these, where market forces alone will not protect them, and where, without Department intervention,

these citizens will suffer irreparable harm. These and other protections are particularly important to the Commonwealth's most vulnerable citizens, including those who are disabled, poor, or elderly. The Department believes that the consumer protections it is charged with enforcing are critical components of fixed telephone service, and that all customers in Massachusetts should have equal rights to these protections, regardless of the technology used to provide service in their community.

With respect to the second objective, the Department's long-standing regulatory framework for providers of telephone service applies based on traditional economic distinctions – how “dominant” the carrier is in the marketplace – not technological ones. Therefore, the application of existing common carrier regulations to fixed VoIP providers will merely continue regulatory policies already in place, and will not impose any price regulation on carriers not currently subject to it for economic reasons. Furthermore, the fixed telephone service market in Massachusetts currently features a mix of VoIP and circuit-switched technologies, not only across different providers but even within individual firms as they update their networks. If the Department were to not regulate fixed VoIP under Chapter 159, in the short term it would be tilting the competitive playing field unfairly based on technology. And in the long-term, the Department would be abandoning protection of fixed telephone service consumers under Chapter 159 altogether, since based on current industry trends it is not difficult to foresee the day when all fixed telephone service in Massachusetts, including that provided by the major incumbent provider, Verizon, will be delivered using VoIP technology. The Department does not believe that either of these outcomes would be consistent with its statutory obligations to regulate telecommunications in Massachusetts consistent with the public interest.

In conclusion, the Department determines that Comcast IP Phone's Digital Voice service is subject to the Department's jurisdiction under Chapter 159, and shall be regulated equivalently to Comcast's former Digital Phone service, as a non-dominant carrier that is *not* subject to retail price regulation, but *is* subject to all other requirements imposed on other non-dominant telecommunications common carriers, including the Department's consumer protections set forth in D.P.U. 18448. Accordingly, Comcast IP Phone is required to file a tariff and registration statement for its Digital Voice service within 30 days from the date of this letter.

Sincerely,

/s/

Michael A. Isenberg,  
Director, Competition Division

cc: Sharon E. Gillett, Commissioner  
Geoffrey Why, General Counsel  
Karen Robinson, Director, Consumer Division



Comcast Cable  
One Comcast Center  
1701 John F Kennedy Boulevard  
Philadelphia, PA 19103-2838

December 10, 2008

Sharon E. Gillett, Commissioner  
Competition Division  
Massachusetts Department of Telecommunications and Cable  
Two South Station  
Boston, Massachusetts 02110

***Re: Response to Department Staff's Letter of November 14, 2008***

Dear Commissioner Gillett:

On behalf of Comcast Phone of Massachusetts, Inc. ("Comcast Phone") and Comcast IP Phone II, LLC ("Comcast IP Phone"), I am writing in response to the letter of November 14, 2008 from Michael A. Isenberg to Stacey L. Parker (the "November 14 Letter").<sup>1</sup> That letter concludes "Comcast IP Phone's Digital Voice service is subject to the Department's jurisdiction under Chapter 159, and shall be regulated equivalently to Comcast's former Digital Phone service . . . ."<sup>2</sup>

Comcast appreciates that the Department of Telecommunications and Cable (the "Department") has taken the time to meet with Ms. Parker and Mark Reilly on December 5, 2008 to discuss this matter further. However, despite the useful discussion, Comcast continues to be concerned about this unexpected effort to exercise jurisdiction over Comcast Digital Voice. The Department staff reached its conclusion via letter correspondence and without the benefit of a docket and evidentiary record. VoIP classification is a complex area of national significance that is currently subject to Federal Communications Commission (FCC) proceedings that may preempt the field altogether. A decision of this complexity and magnitude should not be made without a fully developed factual record, thorough presentation of the legal issues, and careful consideration of the views of all stakeholders.

The November 14 Letter recognizes that it has industry-wide implications for "important consumer protections" and for "maintenance of a level playing field for telecommunications competition in the Commonwealth," and foresees "the day when all fixed telephone service in Massachusetts, including that provided by the major incumbent provider, Verizon, will be delivered using VoIP technology." By its own terms, therefore, the November 14 Letter involves wide ranging issues such as the jurisdiction of state and federal regulators over VoIP services, the scope of regulation over potentially

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<sup>1</sup> Letter from Michael A Isenberg, Director, Competition Division, Massachusetts Department of Telecommunications and Cable to Stacey L. Parker, Senior Director, Regulatory Affairs, Comcast at 4 (Nov. 14, 2008) ("November 14 Letter").

<sup>2</sup> *Id.* at 3, 4.

dominant fixed VoIP services, the relationship between cable companies and their wholesale CLEC partners, and the rights and obligations of these companies that the Department has properly represented to the FCC as “complex, inter-related industry-wide issues ... which have wide-ranging ramifications for the industry, state and federal regulators, and which are better addressed through the rulemaking process.”<sup>3</sup> Comcast agrees such issues are better addressed through a comprehensive rulemaking process. In contrast, the conclusion in the November 14 Letter was reached entirely on the basis of an exchange of letters regarding the discontinuance of retail phone service by Comcast Phone without notice of the full regulatory impact or full airing of the issues with Comcast, much less “due consideration of the full range of perspectives of the many stakeholders affected by this complex issue.”<sup>4</sup> Few state commissions have taken any steps toward broad regulation of VoIP services, and none have acted without a more deliberative process.

The broad conclusion in the November 14 Letter that Comcast IP Phone’s VoIP service is subject to the Department’s jurisdiction conflicts with current and prospective FCC policy and therefore invites prolonged dispute. The Department is aware that a proposal for explicit preemption of all state regulation of VoIP services is pending before the FCC.<sup>5</sup> As a participant in that proceeding, the Department argued that the FCC should revise the definition of “information services” so that interconnected VoIP services are considered “telecommunications services.”<sup>6</sup>

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<sup>3</sup> *Petition of AT&T Inc. for Declaratory Ruling and Limited Waivers*, WC Docket No. 08-0152, Letter from Sharon E. Gillett, Commissioner, Massachusetts Department of Telecommunications and Cable to Marlene H. Dortch, Secretary, Federal Communications Commission at 4 (Aug. 21, 2008). Similarly, the Commissioner of the DTC joined with other NECPUC commissioners in submitting to the FCC that it should not act on intercarrier compensation reform without a “transparent deliberative approach that includes a collaborative industry approach.” *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *In the Matter of Universal Service Contribution Methodology*, WC Docket No. 06-122; *IP-Enabled Services*, WC Docket No. 04-36; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ex Parte Comments of New England Conference of Public Utilities Commissioners at 10 (Oct. 17, 2008).

<sup>4</sup> *Id.* at 2.

<sup>5</sup> The DTC recently filed its latest comments opposing proposed language to “classify as ‘information services’ those services that originate calls on IP networks and terminate them on circuit-switched networks, or conversely that originate calls on circuit-switched networks and terminate them on IP networks (collectively “IP/PSTN” services)” and to “preempt any state efforts to impose ‘traditional ‘telephone company’ regulations’ as they relate to IP/PSTN information services ....” *In the Matter of High-Cost Universal Service Support*, WC Docket No. 05-337; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link Up*, WC Docket No. 03-109; *Universal Service Contribution Methodology*, WC Docket No. 06-122; *Numbering Resource Optimization*, CC Docket No. 99-200; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68; *IP-Enabled Services*, WC Docket No. 04-36, Order On Remand And Report And Order And Further Notice Of Proposed Rulemaking, Appendix A, Chairman’s Draft Proposal at ¶¶ 209-211 pp. A-92-93 & Appendix C, Draft Alternative Proposal at ¶¶ 204-206 pp. C-92-93 (Nov. 5, 2008) (“*FCC Intercarrier Compensation/ Universal Services/ IP-Enabled Services Further Notice*”). Reply comments are due on December 22, 2008. It is possible the FCC will rule on this proposal at its January 2009 meeting.

<sup>6</sup> *Id.*, Comments of the Massachusetts Department of Telecommunications and Cable at 13-15 (filed Nov. 26, 2008).



However, despite the current FCC consideration of this significant issue, the November 14 Letter asserts that the DTC has authority to regulate VoIP services as telecommunications services.<sup>7</sup> This conclusion is without foundation in the absence of a factual record or full presentation of the legal issues.

Rather, Comcast IP Phone's interconnected VoIP service is an information service subject to FCC jurisdiction as recognized in long-established FCC<sup>8</sup> and judicial precedent<sup>9</sup> under which services that include a net protocol conversion are classified as information services. Calls between the Comcast IP Phone VoIP service and the public switched telephone network (PSTN) undergo a net protocol conversion: calls are originated or terminated on the Comcast IP Phone VoIP service using Internet protocol and must be converted to or from the time division multiplexing (TDM) protocol used by the PSTN before the call can be handed off to or received from the PSTN. Comcast IP Phone's interconnected VoIP service also includes a tightly integrated offering that combines transmission of voice communications with IP-enabled capabilities through a web-based "Digital Voice Center" that offers "capabilit[ies] for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information."<sup>10</sup> Based on this precedent, Comcast saw no significant uncertainty that would cause it to seek a ruling from the Department.

Comcast Phone is sensitive to the public policy objectives for regulation of VoIP expressed in the November 14 Letter. Comcast understands and shares the Department's desire to preserve important consumer protections. Accordingly, Comcast delineated in its May 12 Letter a two-page list of consumer protections promulgated by the Department that Comcast IP Phone will continue to voluntarily apply in its VoIP offerings.<sup>11</sup> These protections address the concerns enumerated in the November 14 Letter.

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<sup>7</sup> November 14 Letter at 2-3.

<sup>8</sup> See *FCC Intercarrier Compensation/Universal Services/IP-Enabled Services Docket*, Appendix A, Chairman's Draft Proposal at ¶ 209 pp. A-93 & Appendix C, Draft Alternative Proposal at ¶¶ 204 p. C-92; *Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, Memorandum Opinion and Order, 19 FCC Rcd 3307, ¶¶ 11-14 (2004); *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, ¶ 15 (2005); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, ¶¶ 104-106 (1996) ("Non-Accounting Safeguards Order"); *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501, ¶ 39 (1998) ("[W]hen an entity offers transmission incorporating the 'capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information,' it does not offer telecommunications. Rather, it offers an 'information service' even though it uses telecommunications to do so.").

<sup>9</sup> *National Cable & Telecommunications Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005); *SW. Bell Tel., L.P. v. Missouri Pub. Serv. Comm'n*, 461 F. Supp. 2d 1055, \*75 (E.D. Mo. 2006); *Vonage Holdings Corp. v. Minn. Pub. Utils. Comm'n*, 290 F. Supp. 2d 994, 999 (D. Minn. 2003), *aff'd* 2004 U.S. App. LEXIS 26748 (8th Cir. 2004).

<sup>10</sup> Cf. 47 U.S.C. § 153(20) (defining "information services").

<sup>11</sup> Letter from Stacey L. Parker, Senior Director, Regulatory Affairs, Comcast to Michael A. Isenberg, Director, Competition Division, Massachusetts Department of Telecommunications and Cable at 3-4 (May 12, 2008)

For the reasons discussed above, Comcast respectfully submits that the Department staff's assertion in the November 14 Letter that Comcast IP Phone's VoIP service must be regulated as intrastate telecommunications service results from a lack of factual evidence and the appropriate application of law to such evidence. If the Department wishes to undertake a determination of the regulatory classification of VoIP services, it should commence a proceeding that provides all stakeholders the opportunity to develop a record and be heard. Absent such proper notice and opportunity to be heard on this complex issue of broad significance, Comcast respectfully submits that the Department staff is without authority to assert that Comcast IP Phone must submit a tariff and registration statement. In any event, given the potential for FCC action that may render the issues raised in the November 14 Letter moot, no further action is called for until the FCC has the opportunity over the next 60 days to act on its pending rulemaking on VoIP services.

Respectfully Submitted,



Brian A. Rankin  
Vice President, Deputy General Counsel  
Chief Telephony Counsel

cc: Mark Reilly (Comcast)  
Stacey L. Parker (Comcast)



**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

TWO SOUTH STATION  
BOSTON, MA 02110  
(617) 305-3580  
[www.mass.gov/dtc](http://www.mass.gov/dtc)

DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

DANIEL O'CONNELL  
SECRETARY OF HOUSING AND  
ECONOMIC DEVELOPMENT

DANIEL C. CRANE  
DIRECTOR OF CONSUMER AFFAIRS  
AND BUSINESS REGULATION

SHARON E. GILLETT  
COMMISSIONER

December 24, 2008

Stacey L. Parker  
Senior Director, Regulatory Affairs  
Comcast Cable Communications, Inc.  
12 Tozer Road  
Beverly, MA 01915

Dear Ms. Parker:

In a letter dated November 14, 2008, the Department of Telecommunications and Cable ("Department") notified Comcast IP Phone, LLC ("Comcast or Comcast IP Phone") that the Department determined that Comcast's Digital Voice service is subject to the Department's jurisdiction under Massachusetts General Laws, Chapter 159 as a telecommunication common carrier service, and directed Comcast IP Phone to file a tariff and registration statement for its Digital Voice service within 30 days of the letter (by December 14, 2008). Comcast IP Phone has yet to comply with that directive.

As you know, on December 5, 2008, Commissioner Gillett and Department senior staff met with you and Mark Reilly, at your request, to discuss the Department's position on this issue and for Comcast to provide its views to the Department. At the conclusion of that meeting, you and Mark Reilly noted that Comcast believed there was the possibility that the Federal Communications Commission ("FCC") would issue an order in its pending investigation of intercarrier compensation and universal service reform<sup>1</sup> by January 5, 2009, that would find that fixed VoIP (the type of interconnected VoIP that Comcast IP Phone provides through its Digital Voice service) is subject to exclusive federal authority. Therefore, you requested that the Department extend the December 14, 2008 tariffing and registration deadline until that date. As a courtesy to Comcast, the Department grants the request that the

<sup>1</sup> See *In the Matter of High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link Up*, WC Docket No. 03-109, *Universal Service Contribution Methodology*, WC Docket No. 06-122, *Numbering Resource Optimization*, CC Docket No. 99-200, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, and *IP-Enabled Services*, WC Docket No. 04-36, *Order on Remand*, and *Report and Order*, and *Further Notice of Proposed Rulemaking* (rel. Nov. 5, 2008).



tariffing and registration deadline for Comcast IP Phone's Digital Voice service be extended until January 6, 2009.

The granting of this extension in no way relates to or is influenced by the December 10, 2008 letter from Comcast's Chief Telephony Counsel, Brian Rankin, to Commission Gillett. The Department will respond to that letter at a later date. Please do not hesitate to contact me if you have any questions.

Sincerely,

/s/  
\_\_\_\_\_  
Michael A. Isenberg,  
Director, Competition Division

cc: Sharon E. Gillett, Commissioner  
Geoffrey Why, General Counsel  
Karen Robinson, Director, Consumer Division  
Mark Reilly (Comcast)  
Stacey L. Parker (Comcast)



January 6, 2008

*Via Electronic Mail and USPS*

Michael Isenberg, Director  
Competition Division  
Massachusetts Department of Telecommunications and Cable  
Two South Station  
Boston, MA 02110

Dear Director Isenberg:

Thank you for your correspondence of December 24, 2008, in which you, on behalf of the Department of Telecommunications and Cable (the Department), offered Comcast an extension of time to file a tariff and registration for Comcast IP Phone's Digital Voice service. As you explained, the extension until January 6, 2009 was offered in recognition of the possibility that the FCC would address the regulatory classification of VoIP during its January meeting.

Although Comcast appreciates the Department's courtesy, the position of the company has not changed. As stated in the letter of Brian Rankin to Commissioner Gillett dated December 10, 2008, Comcast respectfully submits that the Department is without authority to subject Comcast IP Phone to Department jurisdiction under Massachusetts Gen. Law, Chapter 159 as a telecommunications provider. For that reason, Comcast IP Phone does not intend to file a tariff and registration statement on January 6, 2009.

As further set forth in Mr. Rankin's letter, if the Department wishes to undertake a state determination of the regulatory classification of interconnected VoIP, it should commence a comprehensive generic proceeding that provides the opportunity for all stakeholders to participate and develop an evidentiary record.

Please do not hesitate to contact me with any questions at 978-927-5700 ext 4337.

Sincerely,

A handwritten signature in black ink, appearing to read "Sharon", with a stylized flourish extending to the right.

Sr. Director, Regulatory Affairs  
NorthCentral Division

cc: Sharon Gillett, Commissioner  
Brian Rankin, Comcast  
Mark Reilly, Comcast



**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

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BARBARA ANTHONY  
UNDERSECRETARY  
OFFICE OF CONSUMER AFFAIRS AND  
BUSINESS REGULATIONS

GEOFFREY G. WHY  
COMMISSIONER

October 28, 2009

Darryl Hanson  
Broadband Manager  
Norwood Light Department  
206 Central Street  
Norwood, MA 02062

Dear Mr. Hanson,

The Department of Telecommunications and Cable ("Department") is interested in clarifying its understanding of Norwood Light Department ("Norwood")'s implementation or use of Voice over Internet Protocol (VoIP) telephone service in the Commonwealth, and the implications of this for Norwood's regulatory status in Massachusetts. The Department is of the belief that Norwood is currently offering facilities-based (or fixed) VoIP telephone services to Massachusetts customers on an untariffed basis. As you may know, the Department has previously expressed its opinion that fixed VoIP telephone service provided on a common carrier basis is subject to the Department's regulatory authority under Chapter 159 of the Massachusetts General Laws, including compliance with the Department's consumer protections set forth in D.P.U. 18448.<sup>1</sup>

If, in fact, Norwood is providing fixed VoIP telephone service in Massachusetts on an untariffed basis, in violation of Chapter 159 of the Massachusetts General Laws and the Department's registration requirements, this letter will serve as notice of Norwood's obligation to come into compliance with the above referenced requirements. Accordingly, Norwood is

<sup>1</sup> See, e.g., Letter from Michael A. Isenberg, Director, Competition Division, Massachusetts Department of Telecommunications and Cable, to Stacey L. Parker, Senior Director, Regulatory Affairs, Comcast (November 14, 2008), available at <http://www.mass.gov/dtc> through the following links: Telecommunications Division > Telecom Statutes, Rules, and Notices > Correspondence with Comcast Regarding Regulation of Fixed VoIP.

required to file a tariff and registration statement for its fixed VoIP telephone service within 30 days from the date of this letter.

If you have any questions, please feel free to contact me at 617-368-1101.

Sincerely,

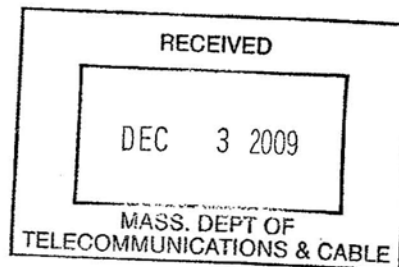
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Michael A. Isenberg  
Director, Competition Division

cc: Geoffrey Why, Commissioner  
Kajal Chattopadhyay, Deputy General Counsel  
Karen Robinson, Director, Consumer Division



Serving Norwood with Cable TV, High Speed Internet, & IP Telephone Services



Tel: (781) 948-1150  
Fax: (781) 769-0660  
www.norwoodlight.com  
info@norwoodlight.com

Mr. Michael Isenberg  
Director, Competition Division  
MA Department of Telecommunications and Cable  
Two South Station  
Boston, Massachusetts 02110

November 26, 2009

*Re: Norwood Municipal Light Department Reply to the Department's Letter of October 28, 2009*

Dear Director Isenberg:

Thank you for providing us with the opportunity to clarify the Department of Telecommunications and Cable's ("Department's") understanding of the Norwood Municipal Light Department's (Norwood Light Broadband (NLB)) VoIP telephone service offering and the associated regulatory ramifications.

Norwood Municipal Light Department, Broadband Division's VoIP offering ("*Digital Telephone Service*") is a "fixed location" "interconnected VoIP" service.<sup>1</sup> NLB's VoIP service is available to end-user residential and business customers in the Town of Norwood, Massachusetts. NLB's *Digital Telephone Service* relies on Momentum Wholesale, LLC ("Momentum") to provide certain underlying telecommunications services, including two way interconnection for the transmission and routing of telephone exchange and exchange access service to and from the PSTN; access to and administration of numbering resources; local number portability - both porting in and porting out of telephone numbers; Operator Services; 911 access; Directory Listing and Directory Assistance services.

NLB provides the following important consumer protections to its NLB's *Digital Telephone Service* subscribers:

- NLB provides at least 30 days from the receipt of bill for payment in full.
- Bills are not considered delinquent until after 30 days.
- NLB *Digital Telephone Service* customers receive at least 15 days written notice prior to discontinuance.
- NLB *Digital Telephone Service* customers receive a second written notice 72 hours

<sup>1</sup> The FCC has defined an "interconnected VOIP service as one that "(1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network." 47 C.F.R. § 9.3. See also, MGL Chapter 64A: Section 18A.



206 Central Street  
Norwood, MA 02062

prior to discontinuance.

- NLB *Digital Telephone Service* customers are called 24 hours prior to "soft disconnection." (Customers who are "soft disconnected" continue to have access to E911 and to the NLB Customer Service Desk.)
- NLB works with customers in unique circumstances on a case-by-case basis.
- While there is not specific protection from disconnection for customers aged 65 and older as set forth in 18848, NLB works with all customers who need additional time to pay or have an emergency that has prevented timely payment.
- NLB *Digital Telephone Service* will not be shut off if the customer is disputing the Norwood Light Broadband *Digital Telephone Service* portion of the bill.
- NLB offers Directory Assistance free of charge to visually impaired or mentally disabled customers who certify eligibility.
- NLB works with the Department's Consumer Division to respond to and resolve all customer complaints on a timely basis.
- NLB *Digital Telephone Service* Rate and Fee Schedules, Subscriber Agreements, User Manuals and other relevant documentation can be found on the *Norwood Light Digital Telephone Service* web site at <http://www.Norwoodlight.com>

In addition, NLB is the process of implementing policies and procedures assuring full compliance with all current regulatory and reporting requirements that apply to "interconnected VoIP Service" as follows:

- NLB currently collects and remits the MA 911/TRS surcharge required of telecommunications providers pursuant G.L. c. 6A, § 18H.
- NLB currently collects and remits taxes and fees of general applicability, such as state sales tax.
- NLB is taking steps to assure compliance in regards to the collections and remittance of Federal USF charges using the "interim safe-harbor" option established by the FCC in its Universal Service Report and Order and Notice of Proposed Rulemaking (FCC 06-94) that was previously handled by its underlying carrier/provider.
- NLB does not charge customers a federal Subscriber Line Charge (SLC).

As suggested in your October 28 letter, we reviewed the correspondence between the Department and Comcast regarding regulation of fixed VoIP, and discovered similar correspondence between the Department and Verizon. We noted that neither Comcast nor Verizon intend to file tariffs for their VoIP service offerings as it is their belief that the VoIP services are not subject to state regulation.<sup>2</sup>

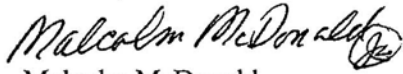
NLB is currently in direct competition with both of these companies. In order to remain on an equal regulatory footing with these much larger competitors, NLB must also reiterate our belief that Norwood Light Broadband *Digital Telephone Service* is not subject to G.L. c. 159, or the rules relating to residential billing and termination practices set forth in D.P.U. Docket 18448 (1977). Accordingly, we do not intend to file a tariff and registration statement by November 27, 2009.

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<sup>2</sup> Letter from Comcast to Michael Isenberg, January 6, 2009; Letter from Verizon to Michael Isenberg, October 21, 2009. Source: <http://www.mass.gov/dtc>, Home > Government > Our Agencies and Divisions > Department of Telecommunications and Cable > Competition Division > Telecommunications Division > Telecom Statutes, Rules, and Notices > Correspondence with Fixed VoIP Providers

I hope the above-provided information is helpful in clarifying the structure and regulatory framework of NLB *Digital Telephone Service* in Norwood, Massachusetts.

Sincerely,

A handwritten signature in cursive script that reads "Malcolm McDonald". The signature is written in dark ink and includes a small circular mark at the end.

Malcolm McDonald  
Superintendent  
Norwood Municipal Light Department

cc: Geoffrey Why, Commissioner  
Kajal Chattopadhyay, Deputy General Counsel  
Karen Robinson, Director, Consumer Division



**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

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BARBARA ANTHONY  
UNDERSECRETARY  
OFFICE OF CONSUMER AFFAIRS AND  
BUSINESS REGULATIONS

GEOFFREY G. WHY  
COMMISSIONER

October 28, 2009

Thomas K. Steel, Jr.  
Vice President, Regulatory Counsel  
RCN Telecom Services, Inc.  
105 West First Street  
South Boston, MA 02127

Dear Mr. Steel,

The Department of Telecommunications and Cable ("Department") is interested in clarifying its understanding of RCN's implementation or use of Voice over Internet Protocol (VoIP) telephone service in the Commonwealth, and the implications of this for RCN's regulatory status in Massachusetts. The Department believes that RCN is currently offering facilities-based or fixed VoIP telephone services to Massachusetts customers, and further, that RCN has a properly filed tariff and registration statement on file with the Department that governs the provision of that service.

As you may know, the Department of Telecommunications and Cable ("Department") has previously expressed its opinion that fixed VoIP telephone service provided on a common carrier basis is subject to the Department's regulatory authority under Chapter 159 of the Massachusetts General Laws, including compliance with the Department's consumer protections set forth in D.P.U. 18448.<sup>1</sup>

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<sup>1</sup> See, e.g., Letter from Michael A. Isenberg, Director, Competition Division, Massachusetts Department of Telecommunications and Cable, to Stacey L. Parker, Senior Director, Regulatory Affairs, Comcast (November 14, 2008); Letter from Michael A. Isenberg, Director, Competition Division, Massachusetts Department of Telecommunications and Cable, to John L. Conroy, Vice President, Regulatory Massachusetts, Verizon (September 22, 2009), available at <http://www.mass.gov/dtc> through the following links: Competition Division > Telecommunications Division > Telecom Statutes, Rules, and Notices > Correspondence with Fixed VoIP Providers.



If RCN's retail telephone tariff on file with the Department does not govern the provision of its fixed VoIP telephone service and RCN is providing fixed VoIP telephone service in Massachusetts on an untariffed basis, in violation of Chapter 159 of the Massachusetts General Laws and the Department's registration requirements, or is not complying with all consumer protections set forth in D.P.U. 18448, this letter will serve as notice of RCN's obligation to come into compliance with the above referenced requirements within 30 days from receipt of this letter.

If you have any questions, please feel free to contact me at 617-368-1101.

Sincerely,

---

Michael A. Isenberg  
Director, Competition Division

cc: Geoffrey Why, Commissioner  
Kajal Chattopadhyay, Deputy General Counsel  
Joslyn Day, Director, Consumer Division



**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

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BARBARA ANTHONY  
UNDERSECRETARY  
OFFICE OF CONSUMER AFFAIRS AND  
BUSINESS REGULATIONS

GEOFFREY G. WHY  
COMMISSIONER

October 28, 2009

Mr. Thomas Josie  
General Manager  
Shrewsbury Electric and Cable Operations  
100 Maple Street  
Shrewsbury MA 01545

Dear Mr. Josie,

The Department of Telecommunications and Cable ("Department") is interested in clarifying its understanding of Shrewsbury Electric and Cable Operations ("SELCO")'s implementation or use of Voice over Internet Protocol (VoIP) telephone service in the Commonwealth, and the implications of this for SELCO's regulatory status in Massachusetts. The Department is of the belief that SELCO is currently offering facilities-based (or fixed) VoIP telephone services to Massachusetts customers on an untariffed basis. As you may know, the Department has previously expressed its opinion that fixed VoIP telephone service provided on a common carrier basis is subject to the Department's regulatory authority under Chapter 159 of the Massachusetts General Laws, including compliance with the Department's consumer protections set forth in D.P.U. 18448.<sup>1</sup>

If, in fact, SELCO is providing fixed VoIP telephone service in Massachusetts on an untariffed basis, in violation of Chapter 159 of the Massachusetts General Laws and the Department's registration requirements, this letter will serve as notice of SELCO's obligation to come into compliance with the above referenced requirements. Accordingly, SELCO is required

<sup>1</sup> See, e.g., Letter from Michael A. Isenberg, Director, Competition Division, Massachusetts Department of Telecommunications and Cable, to Stacey L. Parker, Senior Director, Regulatory Affairs, Comcast (November 14, 2008), available at <http://www.mass.gov/dtc> through the following links: Telecommunications Division > Telecom Statutes, Rules, and Notices > Correspondence with Comcast Regarding Regulation of Fixed VoIP.

to file a tariff and registration statement for its fixed VoIP telephone service within 30 days from the date of this letter.

If you have any questions, please feel free to contact me at 617-368-1101.

Sincerely,

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Michael A. Isenberg  
Director, Competition Division

cc: Geoffrey Why, Commissioner  
Kajal Chattopadhyay, Deputy General Counsel  
Karen Robinson, Director, Consumer Division

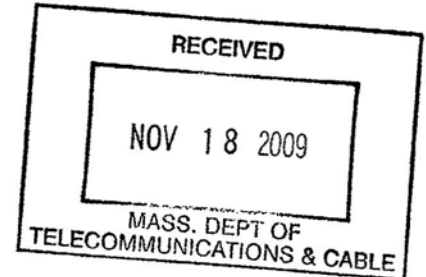


SHREWSBURY ELECTRIC AND CABLE OPERATIONS  
YOUR COMMUNITY PROVIDED ELECTRIC & CABLE SERVICES

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November 16, 2009

Mr. Michael Isenberg  
Director, Competition Division  
MA Department of Telecommunications and Cable  
Two South Station  
Boston, Massachusetts 02110



***Re: SELCO Reply to the Department's Letter of October 28, 2009***

Dear Director Isenberg:

Thank you for providing us with the opportunity to clarify the Department of Telecommunications and Cable's ("Department's") understanding of the Shrewsbury Electric and Cable Operations' ("SELCO's") VoIP telephone service offering and the associated regulatory ramifications.

SELCO's VoIP offering ("*SELCO Telephone*") is a "fixed location" "interconnected VoIP" service.<sup>1</sup> SELCO's VoIP service is available to end-user residential and business customers in the Town of Shrewsbury, Massachusetts. *SELCO Telephone* relies on Sprint Communications Company L.P. ("Sprint") to provide certain underlying telecommunications services, including two way interconnection for the transmission and routing of telephone exchange and exchange access service to and from the PSTN; access to and administration of numbering resources; local number portability – both porting in and porting out of telephone numbers; Operator Services; 911 access; Directory Listing and Directory Assistance services.

SELCO provides the following important consumer protections to its *SELCO Telephone* subscribers:

- SELCO provides at least 30 days from the receipt of bill for payment in full.
- Bills are not considered delinquent until after 30 days.
- *SELCO Telephone* customers receive at least 15 days written notice prior to discontinuance.
- *SELCO Telephone* customers receive a second written notice 72 hours prior to discontinuance.

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<sup>1</sup> The FCC has defined an "interconnected VOIP service as one that "(1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network." 47 C.F.R. § 9.3. See also, MGL Chapter 6A: Section 18A.

- *SELCO Telephone* customers are called 24 hours prior to “soft disconnection.” (Customers who are “soft disconnected” continue to have access to E911 and to the SELCO Customer Service Desk.)
- SELCO works with customers in unique circumstances on a case-by-case basis.
- While there is not specific protection from disconnection for customers aged 65 and older as set forth in 18848, SELCO works with all customers who need additional time to pay or have an emergency that has prevented timely payment.
- *SELCO Telephone* service will not be shut off if the customer is disputing the *SELCO Telephone* portion of the bill.
- SELCO offers Directory Assistance free of charge to visually impaired or mentally disabled customers who certify eligibility.
- SELCO works with the Department’s Consumer Division to respond to and resolve all customer complaints on a timely basis.
- *SELCO Telephone* Rate and Fee Schedules, Subscriber Agreements, User Manuals and other relevant documentation can be found on the *Selco Telephone* web site at <http://www.shrewsbury-ma.gov/selco/>

In addition, SELCO is in full compliance with all current regulatory and reporting requirements that apply to “interconnected VoIP Service” as follows:

- SELCO collects and remits the MA 911/TRS surcharge required of telecommunications providers pursuant G.L. c. 6A, § 18H.
- SELCO collects and remits taxes and fees of general applicability, such as state sales tax.
- SELCO collects and remits Federal USF charges using the “interim safe-harbor” option established by the FCC in its Universal Service Report and Order and Notice of Proposed Rulemaking (FCC 06-94).
- SELCO does not charge customers a federal Subscriber Line Charge (SLC).

As suggested in your October 28 letter, we reviewed the correspondence between the Department and Comcast regarding regulation of fixed VoIP, and discovered similar correspondence between the Department and Verizon. We noted that neither Comcast nor Verizon intend to file tariffs for their VoIP service offerings as it is their belief that the VoIP services are not subject to state regulation.<sup>2</sup>

At some point in the future, SELCO may find itself in direct competition with one, or both, of these companies. In order to remain on an equal regulatory footing with these

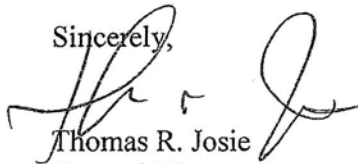
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<sup>2</sup> Letter from Comcast to Michael Isenberg, January 6, 2009; Letter from Verizon to Michael Isenberg, October 21, 2009. Source: <http://www.mass.gov/dtc>, Home > Government > Our Agencies and Divisions > Department of Telecommunications and Cable > Competition Division > Telecommunications Division > Telecom Statutes, Rules, and Notices > Correspondence with Fixed VoIP Providers

much larger potential competitors, SELCO must also reiterate our belief that *SELCO Telephone* service is not subject to G.L. c. 159, or the rules relating to residential billing and termination practices set forth in D.P.U. Docket 18448 (1977). Accordingly, we do not intend to file a tariff and registration statement by November 27, 2009.

I hope the above-provided information is helpful in clarifying the structure and regulatory framework of *SELCO Telephone* in Shrewsbury, Massachusetts.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Josie', is written over the word 'Sincerely,'.

Thomas R. Josie  
General Manager  
Shrewsbury Electric and Cable Operations

cc: Geoffrey Why, Commissioner  
Kajal Chattopadhyay, Deputy General Counsel  
Karen Robinson, Director, Consumer Division



**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

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BUSINESS REGULATIONS

GEOFFREY G. WHY  
COMMISSIONER

October 28, 2009

John Mucha  
Director, Government Relations  
Time Warner Cable  
1021 High Bridge Road  
Schenectady, NY 12303

Dear Mr. Mucha,

The Department of Telecommunications and Cable ("Department") is of the belief that Time Warner Cable ("Time Warner") is currently offering facilities-based (or fixed) VoIP telephone services to Massachusetts customers on an untariffed basis. As you may know, the Department has previously expressed its opinion that fixed VoIP telephone service provided on a common carrier basis is subject to the Department's regulatory authority under Chapter 159 of the Massachusetts General Laws, including compliance with the Department's consumer protections set forth in D.P.U. 18448.<sup>1</sup>

If, in fact, Time Warner is providing fixed VoIP telephone service in Massachusetts on an untariffed basis, in violation of Chapter 159 of the Massachusetts General Laws and the Department's registration requirements, this letter will serve as notice of Time Warner's obligation to come into compliance with the above referenced requirements. Accordingly, Time

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<sup>1</sup> See, e.g., Letter from Michael A. Isenberg, Director, Competition Division, Massachusetts Department of Telecommunications and Cable, to Stacey L. Parker, Senior Director, Regulatory Affairs, Comcast (November 14, 2008); Letter from Michael A. Isenberg, Director, Competition Division, Massachusetts Department of Telecommunications and Cable, to John L. Conroy, Vice President, Regulatory Massachusetts, Verizon (September 22, 2009), available at <http://www.mass.gov/dtc> through the following links: Competition Division > Telecommunications Division > Telecom Statutes, Rules, and Notices > Correspondence with Fixed VoIP Providers.

Warner is required to file a tariff and registration statement for its fixed VoIP telephone service within 30 days from the date of this letter.

If you have any questions, please feel free to contact me at 617-368-1101.

Sincerely,

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Michael A. Isenberg  
Director, Competition Division

cc: Geoffrey Why, Commissioner  
Kajal Chattopadhyay, Deputy General Counsel  
Karen Robinson, Director, Consumer Division



60 Columbus Circle  
New York, NY 10023  
Tel 212-364-8482  
Fax 704-973-6239  
julie.laine@twcable.com

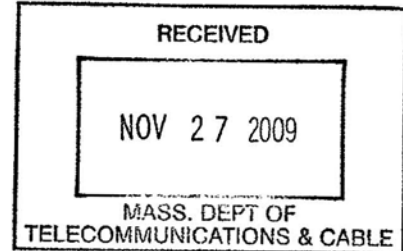
Julie P. Laine  
Group Vice President & Chief Counsel, Regulatory



November 25, 2009

**VIA OVERNIGHT MAIL**

Michael A. Isenberg  
Director  
Competition Division  
Massachusetts Department of Telecommunications and Cable  
Two South Station  
Boston, MA 02110



**Re: Department Letter Dated October 28, 2009**

Dear Mr. Isenberg:

On behalf of Time Warner Cable, I am writing in response to your letter to John Mucha, dated October 28, 2009, in which you state the Department's intention to regulate the interconnected Voice over Internet Protocol ("VoIP") services offered by TWC Digital Phone LLC ("TWC") in Massachusetts as a traditional telephone service. As far as TWC is aware, complying with the terms of the Department's letter would make TWC the only VoIP provider subject to such regulation in Massachusetts. In any event, for the reasons discussed below, TWC believes that the Department lacks the authority to impose tariffing and registration requirements on its interconnected VoIP service.

By way of background, TWC began offering interconnected VoIP services in Massachusetts in 2007. TWC offers two such services in Massachusetts—Digital Phone for residential customers and Business Class Phone for business customers. These services offer competitive, facilities-based alternatives to the traditional landline telephone services that for many years represented the only service option for consumers. In providing these services, TWC is subject to significant regulation by the Federal Communications Commission ("FCC"). Among other things, under federal law, TWC must provide E911 service; comply with the Communications Assistance for Law Enforcement Act ("CALEA"); contribute to the federal universal service support mechanisms; comply with regulations governing carrier proprietary network information; provide access to telecommunications relay services ("TRS") and contribute to the TRS fund; comply with local number portability requirements; and pay annual regulatory fees. TWC also operates in a manner consistent with state regulations applicable to competitive local exchange carriers. For example, TWC complies with state and federal consumer protection requirements relating to slamming, billing, and customer complaints. TWC also remits the Department's annual regulatory assessment based upon its retail interconnected VoIP revenues. In addition, the highly competitive environment compels TWC at all times to provide high-quality service to customers pursuant to reasonable terms and conditions.

In light of its successful operation in the state thus far, TWC was surprised to learn that the Department, without commencing a proceeding and developing a factual and legal record on the subject, suddenly has determined that TWC will be found in violation of state rules if it does not submit to regulation as a telephone service and file a tariff and registration statement. The Department bases this action on its “opinion” that any “fixed VoIP telephone service” like TWC’s is subject to the Department’s regulatory authority. That position, however, conflicts with federal law and policy.

The FCC has sought to establish a uniform, national regulatory framework for interconnected VoIP services, whether fixed or nomadic. In its *Vonage Order*, the FCC declared its goal to avoid the “patchwork regulation” of such services, under which regional and national providers finally challenging incumbent LECs’ entrenched dominance would “have to satisfy the requirements of more than 50 jurisdictions with more than 50 different sets of regulatory obligations.”<sup>1</sup> While the FCC emphasized that “states will continue to play their vital role in protecting consumers from fraud, enforcing fair business practices . . . and generally responding to consumer inquiries and complaints,”<sup>2</sup> it specifically sought to preempt state “economic regulations”—including, in particular, the type that the Department would now impose on TWC.

This preemption ruling did not hinge on whether the interstate and intrastate portions of a call could be separated, as the Department has incorrectly asserted elsewhere.<sup>3</sup> Rather, the FCC concluded that the imposition of certification and tariffing requirements “could stifle new and innovative services” and thus impede the development of competition, contrary to the FCC’s open-entry policy for non-dominant providers, the “express mandates and directives” of the Telecommunications Act of 1996, and “the pro-competitive deregulatory policies the [FCC] is striving to further.”<sup>4</sup> Thus, the FCC relied on its “authority to preempt state regulation that would thwart or impede the lawful exercise of federal authority over the interstate component of the communications” to preempt state public utility regulation of VoIP services.<sup>5</sup>

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<sup>1</sup> *Vonage Holdings Corp.; Petition for Declaratory Ruling Concerning an Order of the Minn. Pub. Utils. Comm’n*, Memorandum Opinion and Order, 19 FCC Rcd 22404 ¶¶ 32, 41 (2004) (“*Vonage Order*”), *aff’d*, *Minn. Pub. Utils. Comm’n v. FCC*, 483 F.3d 570 (8th Cir. 2007)).

<sup>2</sup> *Id.* ¶ 1.

<sup>3</sup> See Letter from Michael A. Isenberg, Director, Competition Division, Massachusetts Department of Telecommunications and Cable, to Stacey L. Parker, Senior Director, Regulatory Affairs, Comcast Cable Communications, Inc., at 2 (Nov. 14, 2008).

<sup>4</sup> *Vonage Order* ¶¶ 20-21, ¶¶ 33-37.

<sup>5</sup> *Id.* ¶ 19; see also *id.* (noting that preemption is appropriate where “state regulation would negate[] the exercise by the FCC of its own lawful authority”) (quoting *Public Serv. Comm’n of Md. v. FCC*, 909 F.2d 1510, 1515 (D.C. Cir. 1990)) (internal quotation marks omitted) (brackets in original).

Although the Department has argued that this preemption ruling does not apply to fixed VoIP services,<sup>6</sup> that is incorrect. At no time—either in the *Vonage Order* or afterwards—has the FCC limited the scope of preemption in this manner. To the contrary, the FCC emphasized that preemption would apply to *any* VoIP service that (1) requires a broadband connection from the user’s location; (2) requires IP-compatible customer premises equipment (“CPE”); and (3) offers a suite of integrated capabilities and features, able to be invoked sequentially or simultaneously, that allows customers to manage personal communications dynamically, including the ability to originate and receive voice communications and access other features and capabilities, even video.<sup>7</sup> The FCC recognized that state entry regulation of any service with these basic characteristics risked “‘negating’ federal policy and rules,”<sup>8</sup> which it stated includes VoIP services “offered or planned by facilities-based providers.”<sup>9</sup>

Accordingly, the FCC stated that “to the extent other entities, *such as cable companies*, provide VoIP services, we would preempt state regulation to an extent comparable to what we have done in this Order.”<sup>10</sup> To remove any conceivable doubt, Commissioner Abernathy emphasized the Commission’s intention to make clear that “all VoIP services that integrate voice communications capabilities with enhanced features and entail the interstate routing of packets—whether provided by application service providers, cable operators, LECs, or others—will not be subject to state utility regulation.”<sup>11</sup>

In addition to conflicting with the *Vonage Order*, regulating TWC’s VoIP service as a telephone service under Massachusetts law would risk encroaching on the FCC’s prerogative to classify interconnected VoIP services. In its *IP-Enabled Services* proceeding, the FCC has asserted exclusive authority to achieve a delicate balance between competing interests in fashioning a regulatory scheme for VoIP services, imposing a series of discrete requirements on interconnected VoIP providers but refraining from resolving definitively their appropriate statutory classification. In that proceeding, the Department has conceded that the classification of VoIP remains an open question.<sup>12</sup> Accordingly, unless and until the FCC affirmatively rejects an information service classification for VoIP services like TWC’s, the imposition of any public utility regulations by the Department would pose a significant risk of precipitating a conflict, with the attendant costs of litigation that inevitably would follow.

TWC is eager to engage in a productive dialogue with the Department concerning these issues and to provide additional information regarding its interconnected VoIP service, and we

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<sup>6</sup> See, e.g., Reply Comments of the Massachusetts Department of Telecommunications and Cable, WC Docket No. 05-337, at 4 n.10 (FCC filed Dec. 22, 2008) (“Mass. Dep’t FCC Reply Comments”).

<sup>7</sup> *Vonage Order* ¶ 32.

<sup>8</sup> *Id.* ¶ 23 (quoting *Louisiana Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 368 (1986)).

<sup>9</sup> *Id.* ¶ 25 n.93.

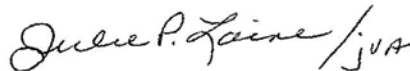
<sup>10</sup> *Id.* ¶ 32 (emphasis added); *id.* ¶ 46 (same).

<sup>11</sup> *Id.*, Separate Statement of Commissioner Kathleen Q. Abernathy.

<sup>12</sup> Mass. Dep’t FCC Reply Comments at 3.

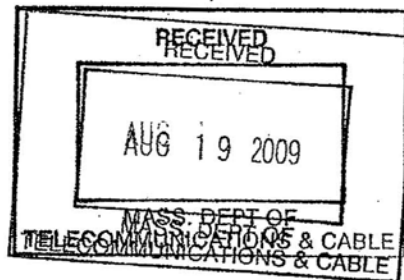
look forward to working with the Department to address its concerns. In the meantime, however, TWC believes it may lawfully provide interconnected VoIP service in Massachusetts without being required to file a tariff or registration statement, and that the Department has no authority to require it to do otherwise. The fact that major service providers including Comcast and Verizon are offering fixed VoIP services without having filed tariffs undermines the Department's assertion that TWC must submit a tariff. At a minimum, TWC asks that the Department extend the 30-day deadline set forth in its October 28 letter as necessary to permit further discussions on these issues.

Sincerely,

A handwritten signature in cursive script that reads "Julie P. Laine" followed by a stylized flourish or initials.

Julie P. Laine

John L. Conroy  
Vice President  
Regulatory Massachusetts



185 Franklin Street Room 1701  
Boston, MA 02110

Phone 617 743-9250  
Fax 617 743-8881

August 19, 2009

Michael Isenberg, Director  
Competition Division  
Department of Telecommunications & Cable  
Two South Station, 4<sup>th</sup> Floor  
Boston, MA 02110

Re: FiOS Digital Voice

Dear Mr. Isenberg:

I write on behalf of Verizon New England Inc., d/b/a/ Verizon Massachusetts ("Verizon MA") with additional information regarding FiOS Digital Voice ("FDV") as a follow up to our meeting of July 9, 2009, and to Alex Moore's letter to Commissioner Why of July 17, 2009, discussing our successful limited trial of FDV in Massachusetts.

As you know, Verizon MA will be expanding the availability of FDV in the coming months. FDV is a Voice over Internet Protocol service. It converts the customer's voice into data packets and carries that information using Internet protocol. FDV allows customers to call, and receive calls from, other VoIP customers as well as customers who are served by the public switched telephone network ("PSTN").

Unlike traditional telephone service on the public switched telephone network, FDV does not distinguish between local calls and domestic long distance calls. While FDV includes some calling features associated with traditional telephone service, such as caller ID, call waiting and call forwarding, it also offers many new Internet Protocol features not available with telephone service, such as scheduled call forwarding, simultaneous ring on multiple phone numbers, virtual telephone numbers and Pick Your Own Area Code, which allows a customer to choose a phone number associated with a location different from the customer address where FDV is provided. In addition, FDV comes with FiOS Digital Voice Account Manager, which allows customers to manage their calling features online and offers a host of additional IP features, including online log of calls and voicemails, visual voicemail and an electronic address book.

FDV is subject to a number of federal regulatory obligations. It contributes to the federal universal service fund and is subject to CALEA and local number portability. FDV allows customers to make 911 calls and Directory Assistance calls, and it supports TRS service.

FDV will be available in Massachusetts as part of "triple play" and "double play" bundles. FDV will also be available as a stand-alone service, but only in limited circumstances. Verizon MA's customer service representatives are trained to explain FDV and its features to customers who order such bundles where FDV service is available.<sup>1</sup> Customers who order FDV are provided with Verizon's FDV Terms of Use and a "Getting Started" guide, which also advises the customer how to access the full FDV User Guide online at [www.verizon.com/fiosvoice](http://www.verizon.com/fiosvoice). Copies of the Terms of Use and the Getting Started Guide provided to Massachusetts customers during the recent limited trial are enclosed with this letter. The Terms of Use, Getting Started Guide and User Guide are subject to revision. For example, the company intends to remove the arbitration clause from the Terms of Use and revise the choice of forum provision.

Verizon MA has developed policies and practices for FDV that allow us to best serve our customers while protecting the company's interests. Key policies include the following:

- Verizon MA voluntarily collects the state E911/TRS surcharge on FDV lines.
- FDV bills are rendered every 30 days, in advance, consistent with billing for Verizon FiOS data and television services, making it easier for customers to read and understand their bills.
- Bills include an Account Summary which states the amount of the previous charges, adjustments for any payments received, the amount of any charges past due, an itemization of new charges, total new charges and the total amount due.
- Payment is due 25 days from the bill date. The due date is stated on the bill.
- If a customer fails to pay a bill by the due date, Verizon MA will send the customer a written notice stating that it will suspend service if payment is not made within 15 days. However:
  - A customer will not receive a notice of discontinuance unless the amount past due exceeds a threshold for the product or bundle at issue. The thresholds for FDV bundles and FDV as a stand-alone product all exceed \$25.

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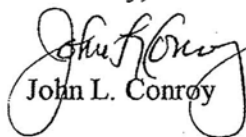
<sup>1</sup> As we explained at the July 9 meeting, technological issues currently impose geographic limits on the availability of FDV. We hope to overcome those issues soon, but even at full deployment, FDV will be available only to customers served by Verizon MA's FiOS fiber optic network.

- Verizon MA will consider other criteria before sending a notice of suspension. For example, Verizon MA may allow a customer with a history of timely payments more time before sending a suspension letter.
- Before suspending service, Verizon MA will make two phone calls to the customer during the 15 day period and a third call on or after the expiration of that period.
- If service is suspended, Verizon MA will provide a second written notice, allowing the customer an additional ten days in which to make payment to avoid termination of the account.
- Verizon MA service representatives have discretion to extend payment arrangements where a customer is unable to pay a bill due to illness or personal injury.
- Customers who desire the Lifeline discount are free to retain or order traditional telephone service.
- Verizon MA will voluntarily work with the Department to respond to and resolve any and all customer inquiries and complaints regarding FDV service on a timely basis.

As you know, it is Verizon MA's position that FDV is not subject to state regulation. Nevertheless, the above policies are consistent with the major items included in the Department's Residential Billing and Termination Practices for intrastate telephone services adopted by the Department's predecessor in D.P.U. Docket No. 18448 (1977). Indeed, the above policies more accurately reflect today's digital reality and the transformative changes in the communications industry over the past 32 years.

As always, please contact me if you have any questions or would like to discuss Verizon MA's FDV service further.

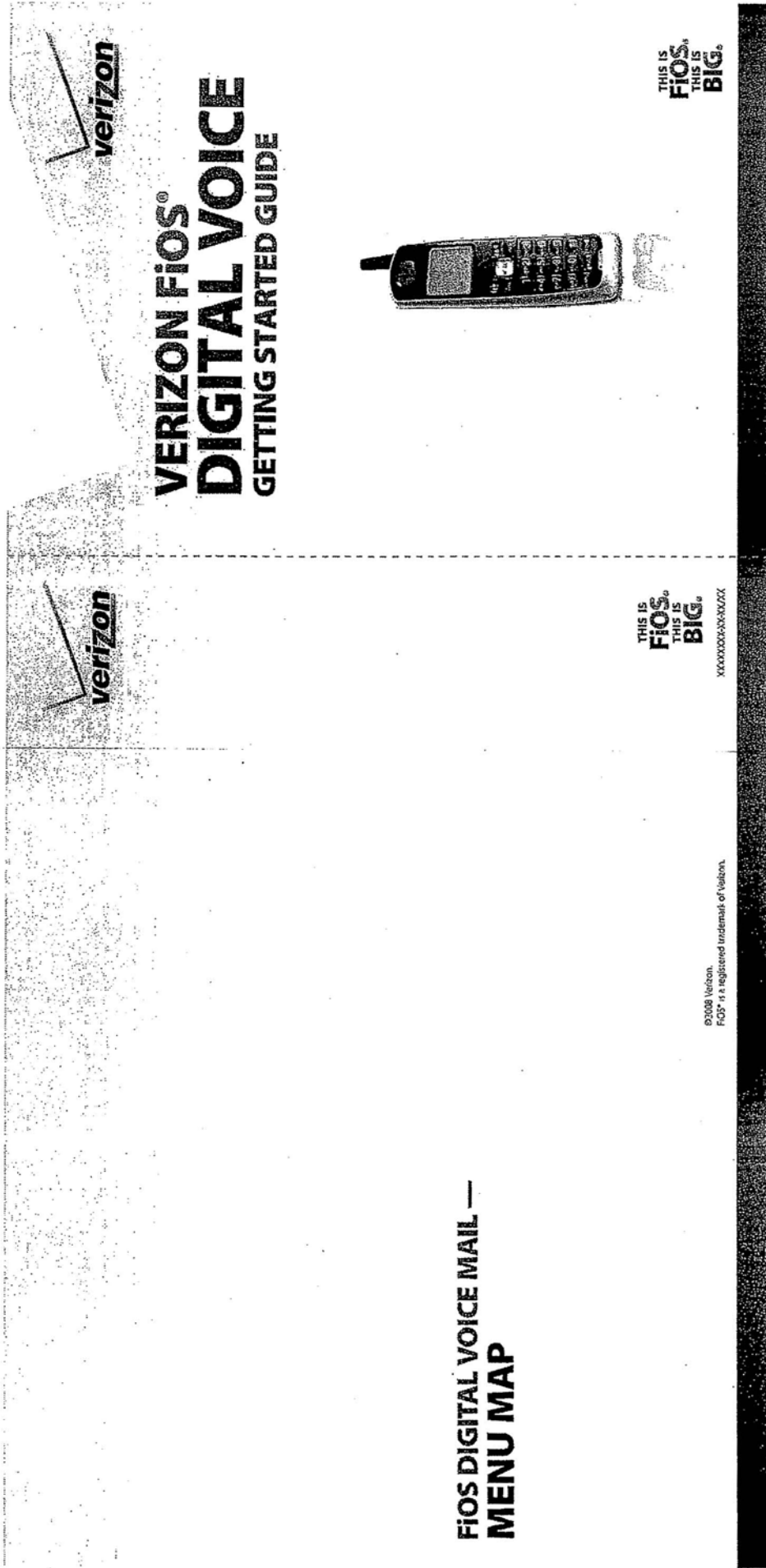
Sincerely,

  
John L. Conroy

Enclosures

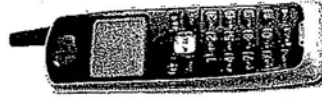
cc: Geoffrey Why, Commissioner  
Ms. Donna Cupelo

**FIOS DIGITAL VOICE MAIL —  
MENU MAP**



**verizon**

**VERIZON FIOS®  
DIGITAL VOICE  
GETTING STARTED GUIDE**



**THIS IS  
FIOS.®  
THIS IS  
BIG.**

**verizon**

**THIS IS  
FIOS.®  
THIS IS  
BIG.**

XXXXXXXXXXXX

©2008 Verizon.  
FIOS is a registered trademark of Verizon.

XXXXXXXXXXXX



## MAIN MENU

### 1 LISTEN TO MESSAGES

#### MESSAGE PLAY (during playback)

- [1] Play Message Again
- [2] Save Message
- [3] Delete Message
- [4] Slower
- [5] Louder
- [6] Faster
- [7] Rewind Five Seconds
- [7,7] Rewind to beginning of message
- [8] Pause
- [9] Fast Forward Five Seconds
- [9,9] Fast Forward to end of message
- [0] Softer
- [\*] Exit Messaging
- [#] Skip

### 3 WAKE UP & REMINDER MESSAGES

#### POST RECORD

- [#] Send
- [1] Mark Private
- [2] Future Delivery
- [3] Return Receipt
- [4] Mark Urgent
- [5] Hear Message
- [\*] Rerecord

### 4 PERSONAL OPTIONS

#### WAKE UP & REMINDER MENU

- [1] Schedule Wake Up Call
- [2] Schedule Reminder Message

### 0 GLOBAL MENU HELP (on all menus)

#### PERSONAL OPTIONS

- [1] Personal Profile
- [2] Greetings
- [3] Group Lists
- [4] Individual Mailbox
- [5] Message Preferences
- [\*] Previous Menu

### \* ACCESS ANOTHER MAILBOX (not voiced)

#### LOGIN TO ANOTHER MEMBER'S SUB-MAILBOX

#### LOGIN TO ANOTHER MEMBER'S MAILBOX

#### POST PLAYBACK (FUNCTION) MENU:

- [1] Play Message Again
- [2] Save Message
- [3] Delete Message
- [4] Reply to Sender
- [5] Forward Message
- [6] Date, Time & Sender
- [8] Return Call
- [9] Renew Expired messages
- [\*] Exit Messaging
- [#] Next Message
- [0] Replay Menu
- If last message played
- [1] Save deleted messages
- [2] Main Menu

#### PERSONAL PROFILE

- [1] Change Passcode
- [2] Change Language
- [3] Notification Options
- [5] Time Zone
- [6] Ring Count
- [\*] Previous Menu

#### GREETINGS

- [1] Name Recording
- [2] Busy Greeting
- [3] Personal Greeting
- [4] Extended Absence Greeting
- [5] Caller Invitation
- [\*] Previous Menu

#### GROUP LIST

- [1] Create
- [2] Change
- [3] Delete
- [\*] Previous Menu

#### INDIVIDUAL MBOX

- [1] Create
- [2] Change
- [\*] Previous Menu

#### WAKE UP MENU

- [1] Schedule Weekday Wake Up Call
- [2] Schedule Weekend Wake Up Call
- [3] Review Wake Up Call
- [\*] Previous Menu

#### REMINDER MESSAGE MENU

- [1] Schedule One Time Reminder
- [2] Schedule Daily Reminder
- [3] Schedule Weekday Reminder
- [4] Schedule Weekend Reminder
- [5] Schedule Reminder on Specific Day
- [6] Review Reminder Messages
- [\*] Previous Menu

#### LANGUAGE SELECT

- [1] English
- [2] Spanish
- [\*] Previous Menu

#### NOTIFICATION OPTIONS

- [1] MWI
- [2] Special Delivery
- [3] Email
- [4] Wireless (SMS)
- [5] Pager
- [\*] Previous Menu

#### PERSONAL GREETING SELECT

- [1] Personal Greeting
- [2] System Greeting "name"
- [3] System Greeting "number"
- [4] System Greeting "without number or name"
- [\*] Previous Menu

#### MESSAGE PREFERENCES

- [1] Envelope
- [2] Autoplay
- [3] Sort Order
- [4] Voice of Sender's Caller ID
- [\*] Previous Menu

# WELCOME TO VERIZON FiOS® DIGITAL VOICE

Congratulations. Your FiOS® Digital Voice service is now working. You are about to experience an exciting new generation of voice communications technology. Your new FiOS Digital Voice service comes with many easy-to-use call management features and benefits. You can manage calls online by setting up features like Call Forwarding and Do Not Disturb, review an online list of your incoming and outgoing calls, and even check Voice Mail from any computer with Internet access. FiOS Digital Voice lets you do it all with your own online Account Manager.

This compact guide will let you get the most out of all the new and exciting features of FiOS Digital Voice. A more detailed User Guide is available at **[verizon.com/fiosvoice/userguide](http://verizon.com/fiosvoice/userguide)** or through your FiOS Digital Voice Account Manager at **[verizon.com/fiosvoice](http://verizon.com/fiosvoice)**.

We hope you enjoy your new phone service.

## **MAKING CALLS WITH YOUR FIOS DIGITAL VOICE PHONE LINE**

### **Domestic Calls and Calls to Canada**

For calls to locations in the U.S., U.S. territories (American Samoa, Guam, Mariana Islands and the U.S. Virgin Islands), Puerto Rico and to Canada:

Dial the 3-digit area code + the 7-digit phone number of the person you are calling. There is no need to dial a 1 before the area code.

### **International Calls**

For calls to the countries listed below:

Dial 1 + the 3-digit area code + the 7-digit phone number of the person you are calling.

Anguilla, Antigua & Barbuda, Bahamas, Barbados, Bermuda, British Virgin Islands, Cayman Islands, Dominica, Dominican Republic, Grenada, Jamaica, Montserrat, St. Kitts & Nevis, St. Lucia, St. Vincent & the Grenadines, Trinidad & Tobago, and the Turks & Caicos Islands.

### **For international rates and information on country codes:**

1. Sign into your Account Manager at [verizon.com/fiosvoice](http://verizon.com/fiosvoice).
2. Click on "Extras."

If you would like to block international calling, access your Account Manager at [verizon.com/fiosvoice](http://verizon.com/fiosvoice) and select "International Call Block" in the "Administration" link on the left side of the screen.

### **Calls that will not be completed**

FIOS Digital Voice will automatically block all 0+, 00, 01, 500, 10-10-XXX, 700, 900, 950, 976, Collect and Third-Party calls. These types of calls cannot be placed or accepted on any FIOS Digital Voice phone line. FIOS Digital Voice will play a reminder message if a call is made to a number that has been blocked.

### **IMPORTANT E-911 INFORMATION**

Before we get started, you should know that in the case of an electrical outage, your FIOS Digital Voice service will continue to operate on battery power for up to eight hours. If electricity has not returned after that time, it will not be possible to make or receive calls, including emergency calls to 911. In the welcome letter you will receive from Verizon, you will find stickers with this information. You will also find them in the package left by the technician during your service installation. We strongly recommend that you apply the stickers to your phones as a reminder of this important aspect of your FIOS Digital Voice.

### **USING YOUR VOICE MAIL SERVICE**

Voice Mail allows callers to leave messages for you when you are away from your phone or when you are unable to take the call. Voice Mail is a free optional service with FIOS Digital Voice. If you have selected Voice Mail, you will be able to retrieve your messages either by phone or online, at home or away from home.

### Setting up your Voice Mail account from home

Callers will be able to leave you messages even before your mailbox has been set up; however, you will not be able to listen to your messages or use the other features in your mailbox until you complete the setup process described below.

1. Dial Voice Mail at 1.888.2FIOSVM (1.888.234.6786).
  2. Enter your default passcode, then press **[#]**. Your default passcode is the last four digits of your FIOS Digital Voice telephone number.
  3. Follow the voice prompts to:
    - Select the default language
    - Create a new passcode
    - Record your personal greeting
    - Record a busy greeting (which a caller will hear when you're on the phone)
    - Record a name announcement
    - Select the greeting callers will hear
- IMPORTANT NOTE:** Your new passcode must be 4–10 digits long. It should be easy for you to remember, but difficult for others to guess. You cannot use repeating digits (e.g., 1111), sequential digits (e.g., 1234, 6543) or any part of your phone number.
4. When you have finished following the voice prompts, your Voice Mail account setup will be complete.

You can change the setup of your mailbox at any time by calling Voice Mail (1.888.2FIOSVM), entering your passcode and following the prompts from the Main Menu. Please refer to the Menu Map (attached at the end of this guide) for available options.

### Retrieving your Voice Mail messages

If you are at home, you can listen to your messages directly from your FIOS Digital Voice phone line. You will know you have new messages if the Message Waiting light is illuminated on your telephone handset (if your phone has this feature) or if you hear an "interrupted" dial tone when you pick up the handset.

When you're away from home, you can retrieve messages by calling the Voice Mail 800 number (below) or accessing your online Account Manager.

#### To listen to your messages from your home phone:

1. Dial Voice Mail (1.888.2FIOSVM).
2. Enter your passcode, then press **[#]**.
3. At the Main Menu, press **[1]**.

#### To listen to your messages while away from home:

1. Dial Voice Mail (1.888.2FIOSVM).
2. When the system answers, press **[#]**.
3. Enter your mailbox number (your home telephone number), then press **[#]**.
4. Enter your passcode, then press **[#]**.
5. At the Main Menu, press **[1]**.

#### To view message information or listen to your messages online:

1. Sign into your Account Manager at [verizon.com/fiosvoice](http://verizon.com/fiosvoice).
2. Click the "New Voice Mail" link on the Home Page. Select the Voice Mail message you want to hear and press "Play". Alternatively, you can go to the "Calls and Messages" tab on the left side of the Account Manager Home Page and select the "Voice Mail" tab.

To review more features available with Voice Mail, see the Voice Mail Menu Map in this guide or visit the User Guide online at [verizon.com/fiosvoice/userguide](http://verizon.com/fiosvoice/userguide).

## USING YOUR FIOS DIGITAL VOICE ACCOUNT MANAGER

Your Account Manager allows you to manage your calls online, giving you a whole new level of control over your voice communications. Your Account Manager Home Page is the first page you see when you log in and it's the control center for FiOS Digital Voice. Each time you log in, the Account Manager Home Page is automatically refreshed, so you get the most up-to-date information available about your account.

The Main Menu bar gives you access to everything you need to manage your calls, such as setting your calling features, accessing Voice Mail, viewing your incoming and outgoing call lists, maintaining a phone book and much more.

### Accessing your Account Manager

**If you already have a Verizon Online Username and Password:**

1. Go to the Account Manager at **verizon.com/fiosvoice**.
2. Enter your Verizon Online Username and Password. This is the same Username and Password you use to access Verizon Central and Verizon Surround.

**If you do not have a Verizon Online Username and Password:**

1. Go to **https://activate.verizon.net/fiosreg/welcome** to create your Verizon Online Username and Password.
2. Go to **verizon.com/fiosvoice** to access your Account Manager.
3. Enter your Verizon Online Username and Password created in Step 1.



### Learn more about FiOS Digital Voice

By accessing your Account Manager you can learn about all the exciting features and benefits that are available to you with FiOS Digital Voice. For more information, please log in at **verizon.com/fiosvoice** to learn about:

- Online Call Logs
- Voice Mail (including online retrieval of messages)
- Innovative calling features such as:
  - Call Forwarding Always
  - Schedule Call Back
  - Selective Incoming Call Block
  - Simultaneous Ring
  - Backup Number
- Place a Call
- Virtual Numbers and Distinctive Ring
- Vanity Numbers
- Online Phone Book
- Online Calendar

### FREQUENTLY ASKED QUESTIONS AND TROUBLESHOOTING

Visit our Online Guide at **verizon.com/fiosvoice/userguide** for details.

## **VERIZON FIOS® DIGITAL VOICE TERMS OF SERVICE**

Welcome to Verizon's FiOS Digital Voice Service.

Please read this agreement carefully before filing it in a safe place for future reference.

In this Agreement ("Agreement"), "you" and "your" mean the customer of Verizon FiOS Digital Voice Service ("Service(s)") defined below, and "Verizon," "we," "our," and "us" mean the Verizon operating companies that provide you with Service (see Exhibit A for the specific Verizon company providing the Service in your state). You acknowledge that you are 18 years of age or older, and you agree that you have the legal authority to enter into this Agreement and affirm that the information you supply to us is correct and complete. Providing false or incorrect information may result in Service provisioning delays, the suspension or termination of your Service and the inability of a 911-dialed call to be correctly routed to emergency response center personnel.

This Agreement incorporates the terms of the Calling Plan you selected. The Calling Plan includes your monthly service allowances and features. To the extent that there is a conflict between this Agreement and your Calling Plan, the terms in your Calling Plan will govern.

**This Agreement becomes binding when you accept this Agreement. You accept this Agreement and Verizon's terms and charges when you subscribe to, use or pay for the Services or tell us orally or through written or electronic means that you accept the Agreement.**

**IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT USE THE SERVICE AND CONTACT US IMMEDIATELY TO TERMINATE IT. YOU WILL BE RESPONSIBLE FOR ANY CHARGES ASSOCIATED WITH THE SERVICE UNTIL THE SERVICE CANCELLATION DATE.**

### **1) DEFINITION OF SERVICE**

- a) Verizon FiOS Digital Voice Service is a residential voice service. For purposes of this Agreement, the term "Service" shall mean Verizon FiOS Digital Voice Service, including all software, equipment and other features, products and services provided by Verizon under the Calling Plan that you selected.
- b) The Service does not allow 500, 700, 900, 950, 976, 00, 01, 0+, collect calls, third party operator assisted calls, calling card calls or dial-around calls (e.g., 1010-XXXX). Verizon will not bill any charges on behalf of other carriers.
- c) The Service is subject to billing and technical capability and the availability of facilities. The Service is not available in all locations.

### **2) SERVICE USE AND LIMITATIONS; CUSTOMER OBLIGATIONS**

- a) **Use of Service.** You agree that the use of the Service, without limitation, is your sole responsibility, is at your own risk, and is subject to all applicable local, state, national and international laws and regulations. This includes the use of the Service by others, with or without your permission. You may not resell, assign or otherwise transfer the Service or Agreement to any other person for any purpose, or make any charge for the use of the Service, without express written permission from Verizon in advance.
- b) **Loss of Service Due to Power Failure.** The Service includes a battery back-up that provides power for your Service for up to eight hours in the event of a commercial



power outage. After the battery is exhausted, the Service (including 911) will not function until power is restored. The battery back-up will not power FiOS Internet (if you subscribe to that service) and therefore some features of the Service will not be accessible through FiOS Internet during a power outage. A power failure or disruption may require you to reset or reconfigure equipment prior to using the Service.

- c) **International Calling, Directory Assistance and Operator Services.** The current charges and rates for international calling, directory assistance, and operator services and the terms and conditions of use thereof are incorporated into this Agreement. Information on current rates is available by contacting Verizon Customer Service at 1-888-553-1555
- d) **Telephone Number.** You have the option to select a telephone number that is outside of your traditional local exchange area ("Pick Your Own Area Code ("PYOAC") Number"). Use of this PYOAC number for certain types of calls, such as 311 calls, may not allow you to reach the local organizations that support these types of calls. A white pages directory listing is not available for any PYOAC number on your account. In addition, if you are a TTY customer and use your PYOAC number to dial 711 and need to reach an emergency operator, it is possible that the telecommunications relay service operator will not be able to direct your call to the appropriate emergency service provider. If you are a TTY customer, we urge you to call 911 to reach emergency assistance.
- e) You agree to promptly notify Verizon whenever your personal or billing information changes (including, for example, your name, address, e-mail address, telephone number, and credit card number and expiration date). You acknowledge and agree that Verizon will be sending you information, including via e-mail, over the Internet.

### 3) REVISIONS TO TERMS AND PRICING

- a) From time to time, we may revise the terms and conditions of this Agreement (including, without limitation, any of the policies incorporated by reference) and the prices for the Service. Increases to the prices or material revisions to the Agreement shall be effective no sooner than 30 days after we post them on our website at [www.verizon.com/fiosvoice](http://www.verizon.com/fiosvoice). If you do not agree to Verizon's revision(s), you must terminate your Service immediately in accordance with this Agreement. By continuing to use the Service after revisions are in effect, you accept and agree to all revisions.

### 4) PRICING AND PAYMENT

- a) **Prices and Fees.** You agree to pay us for the Service at the prices and charges that are billed to you. Monthly recurring charges will be billed one month in advance. The charges for any particular call will depend on a number of factors which include, for example, the Calling Plan selected, call duration, and type of call (e.g., domestic or international). International calls to certain types of phone numbers (e.g., mobile numbers) may be subject to additional charges. If you activate certain features, such as Simultaneous Ring or Call Forwarding, additional per minute or international charges may be incurred. You will be charged for calls forwarded to international numbers as though the forwarded calls originated from your FiOS Digital Voice telephone. All charges due are payable in immediately available U.S. dollars.
- b) **Call rounding/detail.** All calls are rounded up to the next highest minute and billed accordingly. You can view your detailed bill on-line with your FiOS Digital Voice account manager. Your call detail may not appear on your monthly paper bill or your charge card statement.
- c) **Taxes and Other Charges.** Verizon also may charge you for any applicable taxes, fees, surcharges, account set-up fees or other charges made using the Service, unless

you can show with documentation satisfactory to us that you are exempt from these charges. We will not provide advance notice of changes to taxes, surcharges and fees, except as required by applicable law.

- d) **Payment.** You must pay all bills or invoices on time (on or before the due date). We do not waive our right to collect the full amount due if you pay late or if you pay only a part of the bill.
- e) **Late Fees.** If we do not receive your total payment by the due date, we may charge you a late fee on the unpaid balance and may also terminate or suspend your Service. The late fee will be equal to the late fee charged to Verizon local exchange customers in your state. If Verizon uses a collection agency or resorts to legal action to recover monies due, you agree to reimburse us for all expenses incurred to recover such monies, including reasonable attorneys' fees and costs. If your payment is rejected, refused, returned, disputed or reversed by your financial institution or card issuer for any reason, Verizon has the right to charge a returned item fee and/or a late payment charge.
- f) **Charge Card Payment.** You may choose to have your Service billed directly to a charge card acceptable to Verizon. If your charge card is declined, is invalid or payment is not made by the issuer of your charge card at the time that a charge is attempted, you will not be able to use the Service until your account is paid in full.
- g) **Credit Check.** We will evaluate your credit history before providing you service. Your consent may be sought to obtain your credit information from consumer credit reporting agencies at any time and to share it with our affiliates. If your payment history is not acceptable to Verizon or if your payment history is unknown or indeterminable, you may be required, at any time, to provide: (i) pre-invoice payment based on usage incurred; (ii) a valid major credit card account number from an issuer acceptable to Verizon and authorization for Verizon to charge usage to your credit card account; (iii) agreement that your usage of Verizon's network and services will be subject to toll usage limits to be determined by Verizon; or (iv) a deposit. Verizon may refuse to furnish services if any charges owed by you to Verizon or any Verizon affiliate are past due for service(s) provided to you.
- h) **Deposits.** We may require that you provide us with a refundable deposit ("Customer Deposit"). We may also require an additional deposit after activation of the Service if you fail to pay any amounts when due. Within ninety (90) days of termination of Service, we shall return a sum equal to the Customer Deposit, without interest unless otherwise required by law, minus any amounts due on your account including, without limitation, any amounts owed to us for unreturned or damaged equipment, if applicable. If you fail to pay for the Services when due, we may use the deposit to satisfy amounts due without giving notice to you.

##### 5) TERM AND TERMINATION; SUSPENSION

- a) This Agreement shall continue, subject to the terms of this Section, until terminated by either party as permitted by this Agreement.
- b) **Termination of Service with Notice.** Either you or Verizon may terminate this Agreement without cause by giving notice to the other in accordance with the notice provision set forth in this Agreement. Termination of Service by you will be effective upon your notice to Verizon. Termination by Verizon shall be effective thirty (30) days after the date of notice to you, except as otherwise provided in this Agreement. Verizon will not refund monthly charges paid to Verizon when you terminate the Service between billing cycles.
- c) **Limitation, Suspension and/or Termination of the Service by Verizon.**



- i) Verizon can, without notice, limit, suspend or terminate your Service if: (1) you are in breach of any of the terms of this Agreement or any payment obligations with respect to the Service, or if charges owed by you to any Verizon affiliate are past due for service(s) provided to you; (2) your use of the Service is prohibited by law or is disruptive to, adversely impacts or causes a malfunction to the Service, Verizon's network or the use and enjoyment of other users; (3) we are required by a judicial, legislative or regulatory body of competent jurisdiction to suspend or terminate your Service; (4) a ruling, regulation, or order is issued by a judicial, legislative or regulatory body that conflicts with this Agreement; (5) we for any reason cease to offer the Service in whole or in part; (6) you no longer meet the prerequisites for the Service; (7) you, any user of your Service, or any authorized contact on your account threatens our representatives, uses vulgar and/or inappropriate language toward our representatives, "spams" or engages in other abusive messaging or calling; (8) we take action to prevent or to protect against fraud, or to otherwise protect Verizon's personnel, agents, facilities, or services; (9) you use, or attempt to use, the Service for commercial, business or other non-residential purposes; or (10) for any good cause. Verizon shall have sole discretion in its determination of whether any of the conditions (1) – (10) are met.
- ii) **Repair of Service.** We have the right at any time to suspend or interrupt Services to make necessary repairs or changes in our facilities. We may refuse to repair Service if we determine that the conditions at your premises are unsafe for us or our agents.

#### 6) RESTORATION OF SERVICE

- a) Whenever service is disconnected for fraudulent or unauthorized use of service, Verizon may, before restoring service, require the customer to make, at his or her own expense, all changes in facilities or equipment to eliminate illegal use and to pay an amount reasonably estimated as the loss in revenues resulting from such use.
- b) Verizon, in its sole discretion, may refuse to accept your request or application for Service following a termination or suspension of your use of the Service. You must pay past due charges before the Service is reconnected and, if your Service is terminated or suspended for any reason, you may be required to pay a reconnection fee if the Service is reactivated.

#### 7) NOTICES

- a) Verizon's notices to you under this Agreement will be provided by one or more of the following: posting on our web site, recorded announcement, bill message, bill insert, e-mail to an address provided by you, voicemail, posting on your FiOS Digital Voice account manager, letter using United States mail or call to your billed telephone number and such notices are deemed given upon delivery. You must provide notice to Verizon by calling Verizon Customer Service at 1-888-553-1555.

#### 8) PRIVACY POLICY

- a) The Service may use, in whole or in part, a managed data network, the public Internet and third-party networks to transmit voice and other communications. Verizon will take reasonable measures with respect to the secure transmission of the Service. Verizon will treat your personal information in accordance with its then-current Privacy Policy (available at <http://www.verizon.com/privacy>) and the terms of this Agreement. The Verizon Privacy Policy is incorporated into this Agreement by reference. You agree to the terms of the Privacy Policy, which describes Verizon's use and disclosure of information about your account and your use of the Service. In the event of a conflict

between Verizon's Privacy Policy and the other terms of this Agreement, this Agreement shall control.

- b) In the course of providing services to you, we may collect certain information that is made available to us solely by virtue of our relationship with you, such as information about the quantity, technical configuration, type, destination and amount of your use of the telecommunications services you purchase. This information and related billing information is known as Customer Proprietary Network Information, or CPNI. (CPNI does not include your name, address, and phone number.) We may use this information, without further authorization by you, to offer you: (i) services of the type you already purchase from us, and (ii) the full range of products and services available from Verizon and other Verizon companies that may be different from the type of services you currently buy from us. Use of your information will permit us to offer you a package of services tailored to your specific needs. Without further authorization by you, we may also share your information with other Verizon companies with whom you already have an existing service relationship.

**9) LIMITATIONS ON 911 EMERGENCY RESPONSE SERVICES**

- a) **Our liability to you, to anyone dialing 911 using the Service, or to any other person or party, for any loss or damage arising from errors, interruptions, omissions, delays, defects, or failures of 911 services whether caused by our negligence or otherwise, shall not exceed the amount of our charges for such services during the affected period of time. This limitation of liability is in addition to any other limitations contained in this Agreement.**
- b) **Service Outage Due to Suspension of Your Account.** You agree that a service outage due to suspension of your account as a result of billing issues will prevent ALL Service, including any 911 emergency response services.
- c) You agree that any 911 calls made using the Service may be subject to network congestion and/or reduced routing or processing speed. If you have Call Forwarding, Do Not Disturb, Simultaneous Ring or other features programmed and in use at the time you dial a 911 call and your call is interrupted, the emergency dispatcher may not be able to call you back at the phone from which you dialed the call.
- d) **Additional Service Limitations that Apply in the Event that Verizon Cannot Route Your 911 Call Directly to the Appropriate Emergency Service Provider.** If, for any reason, Verizon cannot directly route your 911 call to the appropriate emergency service provider, your 911 call will be routed to a Verizon operator. You agree that the operator and/or emergency response center personnel receiving your call may not be able to identify your phone number or the physical address from which you are calling. You will need to state the nature of your emergency promptly and clearly, including your telephone number and location. You agree that the individual answering the call may not be able to call you back or determine your location if the call is unable to be completed, is dropped or disconnected, or if you are unable to provide your phone number and physical location and/or if the Service is not operational for any reason. After you identify your location, the Verizon operator will determine the appropriate emergency response center for your location and route you to the general telephone number for that center.

**10) DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY**

- a) THE SERVICE IS PROVIDED ON AN "AS IS" OR "AS AVAILABLE" BASIS, WITH ALL FAULTS. VERIZON (AND ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES AND AFFILIATES), ITS THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS, MAKE NO REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED,

INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, CONCERNING YOUR SERVICE. VERIZON DOES NOT WARRANT THAT THE SERVICE WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATA OR INFORMATION.

- b) IN NO EVENT SHALL VERIZON (OR ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES OR AFFILIATES), ITS THIRD-PARTY LICENSORS, PROVIDERS OR SUPPLIERS BE LIABLE FOR: (1) ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, LOSS OF REVENUE OR OTHER COMMERCIAL OR ECONOMIC LOSS ARISING OUT OF THE USE, PARTIAL USE OR INABILITY TO USE THE SERVICE, REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, INCLUDING WITHOUT LIMITATION, THOSE ARISING UNDER CONTRACT, TORT, NEGLIGENCE OR STRICT LIABILITY, EVEN IF VERIZON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM OR DAMAGES; OR (2) ANY CLAIMS AGAINST YOU BY ANY OTHER PARTY.
- c) VERIZON SHALL NOT BE LIABLE FOR ANY DELAY OR FAILURE TO PROVIDE THE SERVICE, AT ANY TIME OR FROM TIME TO TIME, OR FOR ANY INTERRUPTION OR DEGRADATION OF VOICE QUALITY THAT IS CAUSED BY ANY OF THE FOLLOWING: (1) ACT OR OMISSION OF AN UNDERLYING CARRIER, SERVICE PROVIDER, VENDOR OR OTHER THIRD PARTY; (2) EQUIPMENT, NETWORK OR FACILITY FAILURE, UPGRADE, SHORTAGE, RELOCATION OR MODIFICATION; (3) EQUIPMENT, NETWORK OR FACILITY FAILURE CAUSED BY THE LOSS OF POWER TO YOU; OR (4) ANY OTHER CAUSE THAT IS BEYOND VERIZON'S CONTROL.
- d) VERIZON'S LIABILITY FOR ANY FAILURE OR MISTAKE SHALL IN NO EVENT EXCEED SERVICE CHARGES WITH RESPECT TO THE AFFECTED TIME PERIOD.
- e) THE REMEDIES EXPRESSLY SET FORTH IN THIS AGREEMENT ARE YOUR SOLE AND EXCLUSIVE REMEDIES. YOU MAY HAVE ADDITIONAL RIGHTS UNDER CERTAIN LAWS (SUCH AS CONSUMER LAWS) WHICH DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY, OUR EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU. UPON DETERMINATION THAT ANY SUCH EXCLUSION OR LIMITATION DOES NOT APPLY, VERIZON MAY, IN ITS SOLE DISCRETION, MODIFY THIS AGREEMENT TO EFFECT THE ORIGINAL INTENT AS CLOSELY AS POSSIBLE.
- f) VERIZON RESERVES THE RIGHT TO PURSUE ANY AND ALL LEGAL AND EQUITABLE CLAIMS AGAINST YOU PERTAINING TO YOUR USE OR MISUSE OF THE SERVICE OR FOR YOUR BREACH OF THE AGREEMENT (INCLUDING ANY POLICIES RELATING TO THE SERVICE).

#### 11) INDEMNIFICATION

- a) You agree to defend, indemnify and hold harmless Verizon from and against all claims, losses, damages, fines, liabilities, penalties, costs and expenses, including reasonable attorneys' fees, related to or arising from: (a) any violation of applicable laws, regulations or this Agreement by you (or any parties who use your account, with or without your permission, to access the Service); (b) negligent acts, errors or omissions by you (or any parties who use your account, with or without your permission, to access the Service); (c) injuries to or death of any person, and for damages to or loss of any property, which may in any way arise out of or result from or in connection with

this Agreement, except to the extent that such liabilities arise from the gross negligence or willful misconduct of Verizon; (d) claims for infringement of any intellectual property rights arising from the use of the Service, Software, or the Internet; or (e) the absence, failure or outage of the Service, including the 911 emergency response service, and/or the inability of you or any third-party user of your Service to be able to access emergency response center personnel.

## 12) GENERAL PROVISIONS

- a) The Service is not subject to regulation by a state public utility commission or other state utility regulatory authority.
- b) All obligations of the parties under this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive such termination, cancellation or expiration.
- c) Verizon will not be liable for delays, damages or failures in performance due to causes beyond its reasonable control, including but not limited to acts of a governmental body, acts of God, acts of third parties, fires, floods, strikes or other labor-related disputes, of other things we do not control, or an inability to obtain necessary equipment or services.
- d) We may assign all or any part of this Agreement without notice and you agree to make all subsequent payments as directed. This Agreement is not for the benefit of any third party except Verizon's parents, affiliates, subsidiaries, agents and predecessors and successors in interest.
- e) If any of the terms or conditions in this Agreement is held to be invalid or unenforceable by a government body of competent jurisdiction, the holding shall not affect any other term or condition of this Agreement, and the Agreement shall be construed as if it did not contain the invalid or unenforceable term or condition.
- f) You and Verizon agree that the substantive laws of the Commonwealth of Virginia, without reference to its principles of conflicts of laws, will be applied to govern, construe and enforce all of the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement. YOU AND VERIZON CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION OF AND VENUE IN A COURT LOCATED IN FAIRFAX COUNTY, VIRGINIA, FOR ANY SUITS OR CAUSES OF ACTION CONNECTED IN ANY WAY, DIRECTLY OR INDIRECTLY, TO THE SUBJECT MATTER OF THIS AGREEMENT OR TO THE SERVICE. Except as otherwise required by law, including Virginia laws relating to consumer transactions, any cause of action or claim you may have with respect to the Service must be commenced within one (1) year after the claim or cause of action arises or such claim or cause of action is barred.
- g) We reserve the right to modify the Service to reflect any change in any governing law, underlying network service or component affecting the Service.
- h) Verizon's failure at any time to insist upon strict compliance with any of the provisions of this Agreement in any instance shall not be construed to be a waiver of such terms in the future.
- i) This Agreement, including all attachments and all other policies which are fully incorporated into this Agreement either by attachment or by reference, constitutes the entire Agreement between you and Verizon with respect to the subject matter hereto and supersedes any and all prior or contemporaneous agreements whether written or oral. Any changes by you to this Agreement, or any additional or different terms in your purchase orders, acknowledgements or other documents, written or electronic, are void.

- j) **DISPUTE RESOLUTION: WE EACH AGREE TO SETTLE DISPUTES, EXCEPT AS PROVIDED BELOW, ONLY BY ARBITRATION. THERE IS NO JUDGE OR JURY IN ARBITRATION, AND REVIEW IS LIMITED, BUT AN ARBITRATOR CAN AWARD THE SAME DAMAGES AND RELIEF, AND MUST HONOR THE SAME LIMITATIONS IN THIS AGREEMENT AS A COURT WOULD. IF AN APPLICABLE STATUTE PROVIDES FOR AN AWARD OF ATTORNEY'S FEES, AN ARBITRATOR CAN AWARD THEM. WE ALSO EACH AGREE, TO THE FULLEST EXTENT PERMITTED BY LAW, THAT:**
- i) EXCEPT FOR CLAIMS THAT MAY BE HEARD BY THE SMALL CLAIMS COURT IN THE STATE WHERE THE CUSTOMER RESIDES, THE FEDERAL ARBITRATION ACT APPLIES TO THIS AGREEMENT. ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT WILL BE SETTLED BY ONE OR MORE NEUTRAL ARBITRATORS BEFORE THE AMERICAN ARBITRATION ASSOCIATION ("AAA"). YOU CAN ALSO BRING ANY ISSUES YOU MAY HAVE TO THE ATTENTION OF FEDERAL, STATE, OR LOCAL GOVERNMENT AGENCIES AND THEY CAN, IF THE LAW ALLOWS, SEEK RELIEF AGAINST US ON YOUR BEHALF.
  - ii) YOU CAN OBTAIN PROCEDURES, RULES, AND FEE INFORMATION FROM THE AAA ([WWW.ADR.ORG](http://WWW.ADR.ORG)). **THIS AGREEMENT DOES NOT PERMIT CLASS ARBITRATIONS EVEN IF THOSE PROCEDURES OR RULES WOULD.**
  - iii) ANY ARBITRATION AWARD MADE AFTER COMPLETION OF AN ARBITRATION IS FINAL AND BINDING AND MAY BE CONFIRMED IN ANY COURT OF COMPETENT JURISDICTION. AN AWARD AND ANY JUDGMENT CONFIRMING IT ONLY APPLIES TO THE ARBITRATION IN WHICH IT WAS AWARDED AND CAN'T BE USED IN ANY OTHER CASE EXCEPT TO ENFORCE THE AWARD ITSELF.
  - iv) **IF FOR SOME REASON THE PROHIBITION ON CLASS ARBITRATIONS SET FORTH ABOVE IS DEEMED UNENFORCEABLE, THEN THE AGREEMENT TO ARBITRATE WILL NOT APPLY. FURTHER, IF FOR ANY REASON A CLAIM PROCEEDS IN COURT RATHER THAN THROUGH ARBITRATION, WE EACH WAIVE ANY TRIAL BY JURY.**



**Exhibit A**

<b>LOCATION</b>	<b>VERIZON AFFILIATE</b>
California	Verizon California Inc.
Connecticut	Verizon New York Inc.
Florida	Verizon Florida LLC
Delaware	Verizon Delaware LLC
Indiana	Verizon North Inc.
Maryland	Verizon Maryland Inc.
Massachusetts	Verizon New England Inc.
New Jersey	Verizon New Jersey Inc.
New York	Verizon New York Inc.
Oregon	Verizon Northwest Inc.
Pennsylvania	Verizon Pennsylvania Inc.
Rhode Island	Verizon New England Inc.
Texas	GTE Southwest Incorporated (d/b/a Verizon Southwest)
Virginia (with exception of areas listed below)	Verizon Virginia Inc.
Dumfries, Quantico, Prince Williams County, VA	Verizon South Inc.
Washington	Verizon Northwest Inc.

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**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

TWO SOUTH STATION  
BOSTON, MA 02110  
(617) 305-3580  
[www.mass.gov/dtc](http://www.mass.gov/dtc)

DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

GREGORY BIALECKI  
SECRETARY OF HOUSING AND  
ECONOMIC DEVELOPMENT

BARBARA ANTHONY  
UNDERSECRETARY  
OFFICE OF CONSUMER AFFAIRS AND  
BUSINESS REGULATIONS

GEOFFREY G. WHY  
COMMISSIONER

September 22, 2009

John L. Conroy  
Vice President, Regulatory Massachusetts  
Verizon  
185 Franklin Street, 13<sup>th</sup> Floor  
Boston, MA 02110-1585

Dear Mr. Conroy,

On July 9, 2009, Verizon met with the Department of Telecommunications and Cable ("Department") to discuss Verizon's provision of FiOS Digital Voice ("FDV"), a Voice over Internet Protocol (VoIP) product, to a limited number of Massachusetts customers on a trial basis. In a letter dated July 20<sup>th</sup>, Verizon clarified the scope of its FDV service offering by explaining that approximately 525 customers had been enrolled, and further stating that Verizon was not offering or accepting new orders for this service. In a second letter dated August 19<sup>th</sup>, 2009, Verizon explained plans to expand the availability of FDV in the coming months and outlined policies and practices Verizon plans to follow in the provision of this service. Finally, in its August 19, 2009 letter, Verizon stated its position that FDV is not subject to state regulation.

As you know, the Department has previously expressed its opinion that fixed VoIP telephone service provided on a common carrier basis is subject to the Department's jurisdiction under Chapter 159 of the Massachusetts General Laws.<sup>1</sup> Despite the limited number of customers Verizon currently serves with its FDV product, the Department believes that Verizon

<sup>1</sup> See, e.g., Letter from Michael A. Isenberg, Director, Competition Division, Massachusetts Department of Telecommunications and Cable, to Stacey L. Parker, Senior Director, Regulatory Affairs, Comcast (November 14, 2008), available at <http://www.mass.gov/dtc> through the following links: Telecommunications Division > Telecom Statutes, Rules, and Notices > Correspondence with Comcast Regarding Regulation of Fixed VoIP.

is nonetheless providing its service on a common carrier basis and is subject to the Department's regulatory authority, including compliance with the Department's consumer protections set forth in D.P.U. 18448. Accordingly, Verizon is required to file a tariff and registration statement for its FDV service within 30 days from the date of this letter.

If you have any questions, please feel free to contact me at 617-368-1101.

Sincerely,

/s/  
Michael A. Isenberg  
Director, Competition Division

cc: Geoffrey Why, Commissioner  
Kajal Chattopadhyay, Deputy General Counsel  
Karen Robinson, Director, Consumer Division



John L. Conroy  
Vice President  
Regulatory Massachusetts

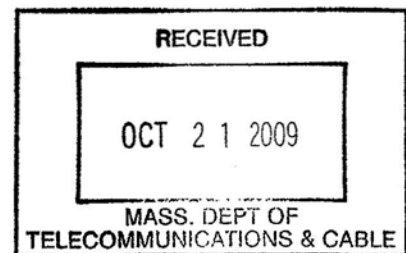


185 Franklin Street Room 1701  
Boston, MA 02110

Phone 617 743-9250  
Fax 617 743-8881

October 21, 2009

Michael Isenberg, Director  
Competition Division  
Department of Telecommunications & Cable  
Two South Station, 4<sup>th</sup> Floor  
Boston, MA 02110



Re: FiOS Digital Voice

Dear Mr. Isenberg:

I write on behalf of Verizon New England Inc., d/b/a/ Verizon Massachusetts ("Verizon MA") in response to your letter to me of September 22, 2009, which asserts that Verizon MA's FiOS Digital Voice ("FDV") service is subject to the Department's regulatory authority and that Verizon MA is required to file a state tariff for FDV service.

As you know from our many discussions on the subject and from my letter to you of August 19, FDV, like the many other VoIP services being offered by other companies in Massachusetts, is not subject to state regulation, including the tariffing requirements of M.G.L. c. 159. Therefore the Department does not have authority over FDV and a tariff is not required.

As I mentioned in my August 19 letter, FDV is subject to a number of federal regulatory obligations, including CALEA and local number portability. It contributes to the federal universal service fund, carries 911 and Directory Assistance calls, and supports TRS service. In addition, Verizon MA understands all too well that in today's hyper-competitive market, it must provide excellent service on fair and reasonable terms in order to win and retain its customers. To that end, Verizon has developed the FDV policies regarding customer matters which I summarized for you in my August 19 letter.

Verizon is very willing to continue our dialogue concerning the legal and regulatory status of FDV service and to provide additional information to the Department regarding FDV service, as you might deem helpful.

Sincerely,



John L. Conroy

cc: Geoffrey Why, Commissioner  
Ms. Donna Cupelo